

# **Freedom of Information Policy and Procedures March 2024**

# Freedom of Information Policy and Procedures

## Introduction

The Freedom of Information Act 2000 ('the FOIA') provides individuals and organisations with the right to request information held by public authorities. The FOI Act gives two related qualified rights – the right to be told whether the information is held and the right to receive the information, subject to exemptions. The right of access applies regardless of the purpose of the application. It is referred to as 'applicant blind' and treats everyone consistently. Requests must be made in writing and the information must be provided to them within 20 working days.

Denbighshire County Council is fully committed to the aims of the Freedom of Information Act and related legislation, and will make every effort to meet its obligations.

This policy outlines Denbighshire County Council's approach to responding to requests for information made under the FOIA. Separate policies exist for Data Protection Act (DPA) requests and requests for environmental information under the Environmental Information Regulations (EIR). Where a request is received under the FOIA and it in fact falls within the EIR or DPA regime, then the Council will automatically channel the request through the appropriate policy, as it is required to do, as different exemptions or exceptions apply in such circumstances and different legal rights apply.

## Objectives

- To provide a framework that fully endorses and adheres to the principles of Freedom of Information.
- To ensure consistency of approach in applying FOI principles, making FOI decisions and enforcing FOI exemptions.
- To ensure that the council meets the standards set out in the Lord Chancellor's Code of Practice under section 45 of FOIA, which provides guidance on the practice to be followed in handling requests for information.
- To act as a users' guide.

The Council recognizes that although it is not legally binding, failure to comply with the Code of Practice may lead to failure to comply with the FOIA.

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To ensure consistency in publishing information via the Council's publication scheme and the Council's responses to FOI enquiries.

To work towards the longer term vision of making use of all available technology and publishing all information unless there is a lawful reason not to do so.

## **Aims**

This policy aims to ensure access to information held by the Council in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. Access to information about decisions we take can help local people to influence local service provision. These aims will be balanced against the need to ensure the confidentiality of certain information, where disclosure would not be in the public interest.

## **Key commitment to access to information**

Denbighshire County Council is committed to openness about the way in which it operates and makes decisions and will favour disclosure of information where possible. Where the application of the public interest test is required, if there is greater weight attached to disclosing the information, rather than withholding it, then the information will be released. The information will also be disclosed if the public interest test gives equal weight to withholding the information and disclosing it.

This policy sets out the general principles that will be adopted by the Council in response to requests for information under the FOI Act.

## **Scope**

This policy applies to all recorded information held by Denbighshire County Council. Recorded information can consist of emails, paper copies, videos, DVDs, photographs, digital files, pen drives/memory sticks/USBs, and any other form of 'recorded' information held at the time the request is received. Information is held by the Council and not by the Council's Officers or Members. This policy applies to all employees and councillors, where the information held belongs to the Council.

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The policy covers all requests for information except requests from individuals for their own personal data, Environment Information requests and normal 'business as usual' requests. A 'business as usual' request is a request for information or services that a service area would expect to receive in its normal day to day operation. Any request that indicates it is a FOIA request cannot be processed initially as 'business as usual' but may subsequently be deemed to be 'business as usual'.

We will make information available proactively through our website and publication scheme. The publication scheme includes a guide to information, which shows the types of information that we make available. The information on the publication scheme will be made accessible in accordance with the provisions of the Equalities Act 2010.

We will provide access to environmental information through the Environmental Information Regulations 2004 ('EIR'). Requests under the EIR will be dealt with in accordance with Denbighshire County Council's Environmental Information Regulations Policy. EIR legislation states that Councils must over time, increasingly disseminate environmental information.

The Council recognizes that there are many similarities between the two regimes but that requests for "environmental Information" must be answered in accordance with the EIR rather than the FOI Act.

It is possible that in some cases both regimes will be relevant. The Council will, when responding to such requests for information, endeavour to clearly identify which parts of the information fall under which regime.

## **Council's Publication scheme**

The Council has adopted a Publication Scheme and is committed to updating and maintaining it to keep it current and relevant. The Publication Scheme contains documents, policies, plans and guidance used by the Council. The material contained within the Scheme is available on the Internet. Where charges are applied these will be stated in the Scheme.

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## **Validity**

To be valid under the FOIA requests must be in writing and legible; must clearly describe the information required; can be made by an individual or an organisation; can be made by letter, fax, email, or on certain social media platforms; and must contain the name of the applicant or company and a return address.

To be valid requests do not have to be written on a special form, do not need to mention the FOI Act, and do not need to refer to Freedom of Information.

## **Transferring requests for information to another public authority**

If the Council receives a request for information that it does not hold, but knows is held by another public authority, it will provide as much assistance as possible to the applicant in transferring their request to the authority, which holds the information. This may be by simply directing them to the appropriate public authority.

If the Council holds any of the information that has been requested, it will treat that part of the request as an FOI Act request and process it accordingly. At the earliest opportunity the Council will inform the applicant of the information it does not hold and provide reasonable assistance to enable them to locate it elsewhere.

If the applicant indicates to the Council that they do not object to the transfer of the request to the other public authority, the Council may transfer the request to the other authority direct. However the Council will notify the applicant if this is to be done.

All transfer of requests and contact with those who have requested information that is held by another public authority will be undertaken as soon as possible so that there is no undue delay. The time period for compliance with the request in respect of the part of information not held by Denbighshire County Council does not start until the public authority that does hold it receives that request.

## **Advice and assistance**

The Council has a duty to provide advice and assistance to applicants under Section 16 of the FOIA so far as it would be reasonable to expect the Authority to do so. The Council is

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committed to compliance with its public sector equality duties, and in this regard anyone who requires help or assistance e.g. by reason of disability or language barriers will be assisted by the FOI team to make their request under FOIA. The Council will offer advice and assistance to any person or organisation that wishes to make a request for information. The Council is committed to dealing with requests within the statutory guidelines, within no more than 20 working days and more speedily if possible.

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

Access to Information Team

Legal Services

Denbighshire County Council

PO Box 62

Ruthin LL15 9AZ

Email: [information@denbighshire.gov.uk](mailto:information@denbighshire.gov.uk) Tel: 01824 708242

## Roles and responsibilities

### Heads of Service

- Responsible for ensuring operational compliance with this policy within their own Service and their own Scheme of Delegation.
- Appoint Information Management Officers to be responsible for FOI requests.
- Promote publication of information to the website.
- Ensure that officers with responsibilities for FOI requests are supported in their work in terms of commitment and resources.
- Ensure all staff comply with the agreed policy and procedures for FOI. Recognise FOI issues in service planning and resource allocation.

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## Access to Information Officers, Legal Services

- Provide advice and guidance on the FOI/EIR policy and procedures.
- Provide training in FOI/EIR issues.
- Log all the details of the request for information.
- Ensure that the electronic request for information system is kept fully up to date.
- Coordinate requests for information in conjunction with coordinators (Information Management Officers).
- Consider whether the request for information is vexatious, repeated (i.e. the requester has asked for the same or similar information within the last 120 days) or likely to take longer than 18 hours to collate the information.
- Consider draft responses prepared by officers and ensure that the information is being provided (subject to any exemptions under the FOI Act).
- Prepare responses to internal reviews, referring the complaints to the Services, or the Access to Information Panel, when necessary.
- Identify complex or sensitive cases that require referral to the Access to Information Panel.
- Prepare papers and advice for the Access to Information Panel.
- Develop and maintain the corporate FOI policy and procedures.
- Publish suitable datasets on the website which have been provided in FOI responses, in accordance with the FOI Code of Practice.
- Publish FOI statistics on the website in accordance with the FOI Code of Practice.
- Monitor and review the effectiveness of the policy and procedures.
- Report on compliance annually to the Senior Information Risk Officer.

## Information Management Officers (IMOs)

- Coordinate requests for information.
- Ensure that requests for information are handled effectively in their Service.
- Ensure that he/she is the correct officer to progress the request, if not refer the request back to the Access to Information Officer as quickly as possible.

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- If requests are received direct by the Service, then the IMO should direct them to Access to Information Officers.
- Promote the policy and procedures within their service, reporting any difficulties to the Access to Information Officers.
- Ensure that any relevant databases or spreadsheets are kept fully up to date.
- Consider whether the request for information is vexatious, or likely to be expensive (over 18 hours of collation and retrieval), or whether any other exemption might apply. If the IMO considers the request to be any of these, they must immediately notify the Access to Information Officers.
- Information Management Officers will receive additional training and will be responsible for providing guidance to staff throughout their Service on access to information in line with this Policy.

## **Corporate Director - Governance and Business**

- Provide legal advice (when requested) on the legality of proposed responses and refusal notices.
- As Chair of the Access to Information Panel, provide advice and decisions on cases that have been referred to the Panel. (The Panel's Terms of Reference are attached as Appendix A).
- The Corporate Director - Governance and Business is authorised to act as the "qualified person" under Section 36 of the FOI Act but will consult with the Access to Information Panel on the decision.

## **All Council Employees and Councillors**

- Be aware of the FOI Act and what it means.
- To identify any request that falls under the FOI Act.
- Follow this policy and its procedures for handling FOI requests.
- Deal with all requests as soon as possible and within 20 working days of receipt.
- Ensure that all requests are logged with their Information Management Officer or the Access to Information Officer.
- Provide advice and assistance to persons making requests for information.

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- Staff that deal with mainly environmental information (such as those employed in waste or planning units) should be aware that a request for environmental information can be made verbally, not in writing as in the Freedom of Information Act.
- Be aware that once a request for information has been made, the information achieves a special status. It will then become a criminal offence to alter, deface, block, erase, destroy or conceal the information with the intention of preventing disclosure. The Council or the individual is liable to a fine.

## Charging

The Council is entitled to refuse to answer a request on the grounds of cost if it would amount to more than £450 to do so. This is equivalent to about two and half days of work (or 18 hours at the rate of £25 per hour of each officer's search time as prescribed in the Regulations).

When calculating whether answering a request would exceed this threshold, the Council will take account of the costs involved in the following activities: determining whether it holds the information; locating and retrieving the information; and extracting the information.

In applying fees and charges the Council can take account of neither the costs of considering whether information is exempt under the Act, nor time taken to redact documents, nor possible expenses incurred in the issuing of Fee Notices.

If a request is estimated to cost less than the prescribed £450 limit, and there is no other basis on which it may be refused or otherwise dealt with, the Council will answer the request. The maximum fee that can be charged in these cases is limited to the specified costs of postage, printing and photocopying, referred to as 'disbursement costs', i.e. the costs of informing the applicant whether the Council holds the information, reproducing any document containing the information; and communicating the information to the applicant.

The Council, at its own discretion, will determine to waive all costs under £10 in respect of a single request made under the Freedom of Information Act 2000; however, above this sum full disbursement costs will be charged. This decision may be reviewed periodically.

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If the Council chooses to answer a request that will cost more than the £450 threshold, the applicant will be contacted and advised what information will be available below that limit, i.e. it will be discussed with the applicant whether he/she would prefer to modify the request to reduce the cost in terms of officer's time.

If an applicant still wishes to proceed with the original request the maximum fee that may be charged is equivalent to the total estimated costs of:

Determining whether the Council holds the information, locating and retrieving the information, and extracting the information from a document containing it (prescribed cost of officers' time); and informing the applicant whether the Council holds the data and communicating the information to the person making the request (disbursement costs).

If the applicant does not agree with the proposed fee, they can appeal through the Council's complaints procedure in the first instance.

### **Consecutive or Campaign Requests**

These are where two or more requests for information are made to the Council by one person or by different persons who appear to be acting in concert or in pursuance of a campaign.

The rule is that the estimated cost of complying with these requests is deemed to be the total cost of complying with them all, i.e. where the cumulative cost becomes £450 or over, the Council could refuse to answer the particular request or charge for officers' time involved in servicing all of the requests. However, for this rule to apply the requests would need to relate to the same or similar information and be received within any period of 60 consecutive working days.

### **Consultation with third parties**

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

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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 disclosure, unless such a consultation is not practical. The consultation may assist the Council in determining whether an exemption under the FOI Act applies to the information requested, or the views of the third party may assist the Council in determining where the public interest lies under section 2 of the FOI Act. A third party's refusal to consent to disclosure of information does not necessarily mean that information will not be disclosed. If the cost of consultation with the third party is disproportionate, consultation may not be undertaken. 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 Council because no exemption applies.

## **Information provided in confidence**

Information provided in confidence by a third party is exempt information under section 41 of FOI Act if the disclosure of that information to the public would be an actionable breach of confidence by the person providing the information or any other person. The Council will only accept information from third parties on a confidential basis if that information would not otherwise be provided to the Council to assist the delivery of the Council's functions. The 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 if it cannot be treated confidentially.

## **Contracts**

The 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 FOI Act. 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 might be classed as exempt information, so may 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.

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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, the restrictions on disclosure may subsequently be overridden by obligations under the FOI Act. Further, the public interest in releasing information may after 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 the FOI Act and, in relation to that service, will be subject to the terms of the FOI Act. The Council will take into consideration the OGC/GPS Policy and Guidance on disclosure of procurement and post tender award information.

## Refusal of requests

The Council recognises that there will always be some information which it must not disclose or which it is not in the public interest to disclose. In these cases the Council will ensure that applicants are given clear and accurate reasons for the refusal of their requests and assistance in finding relevant, alternative information. Applicants have the right to have the decision reviewed. Applicants will be informed of this right and may seek such a review if dissatisfied with the Council's response.

If the 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 B 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

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

## **Vexatious/repeated requests**

### **Repeat requests**

This is where a repeated request is received that is identical or substantially similar to a previous request from the same person, The Council will consider this as a repeated request. The Council is not obliged to comply with repeat requests for information, under the FOI Act unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. In reaching a decision about whether an application for access should be categorised, as a repeat request the Council will have regard to: the time that has elapsed since the previous request; whether the request is identical or substantially similar to the previous request; whether any relevant, new information has been generated since the previous request. A 'reasonable interval' will be deemed to be 120 working days.

Where a request is refused because it is considered repeated, the Council will issue a written notice within 20 working days of the request. The Council will send out a standard letter stating that the request has been declined on the grounds that it is repeated. The applicant will receive information about the Council's Internal Review Process. Details of the rights of appeal to the Information Commissioner will also be enclosed.

Where a notice has previously been issued to the applicant that the request is repeated, the Council will not issue a further notice.

### **Vexatious requests**

The Council is not obliged to comply with vexatious requests under the FOI Act. The Council will apply the term 'vexatious' fairly and consistently. In determining whether a

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request should be refused because it is vexatious the Council will consider all the circumstances of the request, including:

- The context and history of requests submitted by an applicant; Repeat requests submitted by an applicant (see, 'Repeat Requests')
- Whether the request is likely to cause unjustified distress, disruption or irritation.
- Whether the request could fairly be seen as obsessive.
- Whether complying with the request imposes a significant burden.
- Whether an applicant is habitually and persistently submitting requests where there appears to be no reasonable grounds for them to do so.
- Whether there is a strong likelihood that such requests are being made to intentionally cause harassment, cause distress to staff, divert resources or to disrupt the proper workings of the Council.

The Council is aware that the term 'vexatious' should be applied to the activities of the applicant and not to their nature or attitude. The Council will assess whether a request is vexatious based on the type of information requested and not on the identity of the applicant.

Where a request is refused on the grounds that it is deemed to be vexatious, a written notice from the Council will be issued within 20 working days of receipt of the request.

The Council will send out a standard letter stating that the request has been declined on the grounds that it is vexatious. The applicant will be notified of the internal procedures for dealing with a complaint. Details of the rights of appeal to the Information Commissioner will also be enclosed.

Where a notice has previously been issued to inform the applicant that the request has been classified as vexatious, the Council will neither acknowledge nor answer subsequent requests that are made on the same or similar subject.

Where a request is received and there is a chance it is merely vague rather than vexatious due to a lack of knowledge on the part of the applicant, the Council will clarify with the

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applicant what is actually required. This may be done by telephone or by providing a written request for clarification.

Where necessary the Access to Information Panel will meet to form a decision on whether the threshold for this exemption has been met, before any further action is taken.

## Complaints

Any person who is unhappy with the way in which the Council has handled their request for information may request an internal review. Any expression of dissatisfaction concerning a Freedom of Information response will also be treated as a request for an internal review. The Information Commissioner is unlikely to investigate any complaint about the Council's handling of an information request unless the complaints procedure has been exhausted.

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; the information will be made available at the earliest opportunity following notification of intended disclosure. Complaints about the way in which information requests are handled should be directed to Access to Information at:

Access to Information Team

Legal Services

Denbighshire County Council

PO Box 62

Ruthin LL15 9AZ

Email: [information@denbighshire.gov.uk](mailto:information@denbighshire.gov.uk) Tel: 01824 708242

If the decision to refuse disclosure is upheld or the internal Review 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:

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The Information Commissioner Wycliffe House

Water Lane Wilmslow Cheshire SK9 5AF

Tel No: 0303 123 1113

## Monitoring and review

Compliance with this policy and related procedures will be monitored by the FOI Team, working with the Information Management Officers from each service and by the Access to Information Panel. Reports on the panel and the Councils activities under FOI are reported annually to the Council's Corporate Governance Committee.

All Officers, agency staff and Councillors are expected to comply fully with this Policy and the FOI Act in respect of Council information. Any serious or wilful breach may be a disciplinary matter or a breach of the Members Code of Conduct.

This policy will be reviewed no later than March 2027

## Appendix A

### Freedom of Information Access to Information Panel

#### Terms of Reference

Denbighshire County Council is committed to compliance with all information legislation, the Human Rights Act and the common law duty of confidentiality. The Council approved the formulation of a corporate Access to Information Panel in April 2012, and approved the revision of the Panel in 2020. The panel members' obligations and powers are set out in the officer Scheme of Delegation contained within the Council's Constitution and adopted by Full Council.

#### Panel members

##### Full Members:

- Corporate Director: Governance and Business & Monitoring Officer (Chair)

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- Legal Services Manager
- Heads of Service
- SIRO

## Advisory Members:

- Places Team Leader (legally qualified)
- Deputy Monitoring Officer (legally qualified)
- Access to Information Officer
- Service Representatives

The panel is quorate when at least one full member and one legally qualified member (who may be an advisory member) is in attendance.

## Role and purpose

The purpose of the Access to Information Panel is to reach decisions on the disclosure or withholding of information following the receipt of a request for information under the Information Legislation, including disclosures under the Data Protection Act. The purpose of the Panel is **not** to provide an additional layer of bureaucracy, but to ensure consistency of approach in all areas of disclosure across the Council, with the emphasis on open government and transparency, in order to increase public confidence in the Council's decision making, but also its obligations to protect personal information. It will also provide Services with the option of a reference to the Panel where they consider an exemption is applicable, against the views of the Access to Information Officer.

The Panel will make decisions on complex, contentious, highly sensitive or very high profile exemption decisions. It will also accept referrals from a Service who specifically wish the matter to be decided by the Panel.

The Panel will not make decisions on straightforward third party redactions of personal information; exemptions which in the view of the Head of Legal and Democratic Services or his deputy, and the Access to Information Officer, are clearly applicable to the request and will not require the commitment and attendance of the Panel.

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## **Terms of Membership**

It is a condition of the panel membership that all Panel members attend training on the Information Legislation in order to understand and apply the exemptions properly. A full Panel member cannot delegate his or her responsibility to another Officer who is not a Panel member.

Where a conflict of interest affects a Panel member's decision making, they must advise the Panel of this interest and not take part in the decision. They may take their 'hat' off as Panel member and make representations from their Service, but they cannot vote on the issue.

Panel members shall keep confidential the personal details of the requestor and any confidential information they are privy to, in their capacity as panel members.

## **Quorum**

The Panel shall only be quorate when at least one legally qualified officer is present and at least one other full Panel member.

Wherever possible the Panel shall endeavour to reach a unanimous decision. Where this is not achieved, each member shall have one vote. Any matter will be decided by a simple majority of those members voting and present. In the event of an equilibrium the Chair shall have the casting vote.

## **Process and Procedures**

A referral to the Access to Information Panel shall be through the Access to Information Officer, who will then make arrangements for the Panel to meet, taking into consideration the statutory time limits in which the Service needs to deal with the request. If a Service wishes to rely on the exemption, a delegate shall be invited to attend the panel, but their attendance is not mandatory.

The Access to Information Officer shall prepare the report for the panel outlining the issues, but the Panel shall be entitled to ask questions and consider factors outside of the report if they consider this relevant. Where recommended, Legal Services shall draft the

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response to the applicant. If due to shortness of time a written report is not available, legal advice may be given verbally at the Panel, and noted in the minutes.

The Access to Information Panel members shall use their best endeavours to attend any urgent meetings where this is necessary and unavoidable; however reasonable notice must be given to Panel members. If appropriate, urgent decisions may be made electronically, providing the request is not complex and does not necessitate the personal attendance of the department wishing to rely on the exemption.

## Section 36 Decisions

Corporate Director - Governance and Business is the sole panel member for s.36 decisions, who shall consult and itemize the issue before the panel, and take the panels' views into consideration, prior to a final decision under this section.

## Appendix B Exemptions from Disclosure

### Exemptions where the public interest test applies (Qualified Exemptions)

- Information intended for future publication National Security
- Defence
- International relations
- Relations within the UK
- The Economy
- Investigations and proceedings conducted by public authority
- Law Enforcement
- Audit functions
- Formulation of government policy
- Prejudice to effective conduct of public affairs
- Communications with Her Majesty
- Health and Safety
- Environmental Information (accessed via the Environmental Information Regulations)
- Legal Professional Privilege

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- Commercial Interests.

## **The Public Interest Test**

Many exemptions are subject to a 'public interest test' which can be a complex legal test to apply and requires a weighing up of the many factors in favour of disclosure, against those factors in favour of withholding. It is not simply what the public is interested in but what is in their best interest.

## **Exemptions where the public interest test does not apply (Absolute Exemptions)**

- Information accessible to the applicant by other means
- Court records
- Parliamentary privilege
- Personal information
- Information provided in confidence
- Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.
- Information supplied by or relating to bodies dealing with security matters.