

# Freedom of Information Policy

Central Hub Brighton

The Connected Hub and Brighton and Hove Pupil Referral Units

<b>Approved by:</b>	Co-Headteachers	<b>Date:</b> February 2023
<b>Last reviewed on:</b>	February 2023	
<b>Next review due by:</b>	February 2024	

## **1 Purpose of Policy**

To define the standards expected of all Brighton & Hove City Council employees, and any third parties, when processing information on behalf of the Council for the purpose of a Freedom of Information request.

## **2 Policy Summary**

This policy outlines BHCC's obligations and responsibilities in relation to the Freedom of Information Act 2000.

## **3 Critical Points**

A serious breach of this policy could lead to disciplinary and/or legal action.

## **4 Who does this policy apply to?**

This policy is applicable to anyone processing data on behalf of BHCC for the purpose of an FOI.

## **5 Is acceptance of this policy mandatory?**

Yes, this policy is mandatory for all users described in section 5 above.

## **6 Introduction**

The Freedom of Information Act 2000 (FOIA) gives the public a general right of access to information held by public authorities, subject to certain conditions and exemptions.

Anyone, anywhere, may request information for any reason. FOIA covers both old and new information, and applies to information recorded in any form or format. FOIA aims to foster a culture of openness across the public sector.

The Council is committed to compliance with the FOIA. BHCC regards the lawful and appropriate management of information as essential to its successful functioning and to maintaining the confidence of stakeholders. The Council fully endorses and adheres to the principle of public access to official information wherever this is possible.

## **7 Scope**

Brighton and Hove City Council will comply with the requirements of the Freedom of Information Act.

It is the personal responsibility of all employees and any third party processing information on behalf of the Council to familiarise themselves, and comply with this policy and associated guidance (where relevant to their role).

This policy applies to all non-exempt information held by BHCC.

## **8 Policy**

### **8.1 Principles**

The FOIA imposes the following requirements on the Council:

- To adopt and maintain a Publication Scheme. A Publication Scheme is a commitment to publish an identified range of Council information proactively into the public domain. This includes information that is readily available on the website.
- To provide access to Council information which is not otherwise published on receipt of a written request, stating the name and address of the requestor and describing the information required.
- To inform the requestor, in writing, whether we hold that information, and if so, to communicate that information to them within 20 working days, subject to any exemptions or fees.
- Where information is exempt from disclosure for a statutory reason, to send the requestor a notice which specifies and explains the reason why.
- If a fee is chargeable, to send the requestor a fees notice, stating the amount required.
- To provide advice and assistance, as far as is reasonable, to anyone seeking information about the Council.

The Council will ensure that appropriate systems, procedures and operational guidance are in place to ensure that these requirements are met. Documentation supporting FOIA compliance includes guidance for staff and requestors, a detailed statement on fees (Appendix 1), procedures for appealing FOI decisions (Appendix 2), a summary guide to the meaning and application of exemptions and a Records and Data Retention Schedule setting out retention and destruction periods for all types of records.

To support full compliance with the FOIA the Council will undertake the following actions and activities:

- Communicate information to requestors, or otherwise send a refusal notice, within the statutory time limit allowed for responses (20 working days).
- Apply any relevant exemptions lawfully and appropriately.
- Charge requestors for information in accordance with our statement of fees, which take proper account of guidance from the Ministry of Justice.
- Freely provide advice and assistance to requestors as far as is reasonable.



## 8.2 Risk

Brighton & Hove City Council recognises the risks associated with staff providing information in order to comply with the FOIA are as follows:

- Reputational
- Various sanctions available to the ICO, including monitoring

## 8.3 Monitoring

FOI compliance is reviewed at the Information Governance Board (IGB) on a quarterly basis.

## 8.4 Responsibilities

All Council staff are informed about the policy for supporting compliance with the FOIA on appointment and during induction. Training is equally available to established staff and teams on demand. Guidance on handling information access requests is readily available on the website, as are contact details of the Information Governance Team.

All Council staff must:

- Ensure that requests for information are handled in accordance with this policy and associated guidance.
- Pass on information access requests to the Information Governance Team promptly and in accordance with published guidance.
- Ensure that the Council records and information for which they are responsible are complete and accurate.
- Provide advice to requestors in accordance with this Policy and associated guidance or refer requestors to the Information Governance Team.

Failure to respond appropriately to information access requests is a breach of the Council Regulations and may additionally be a breach of the law. In particular it is a criminal offence to conceal, destroy or alter information intentionally to prevent it from being released, where the information is the subject of a Freedom of Information request.

All users have a responsibility to read, understand and implement this policy.

## **9 Related Policies, Standards & Guidance**

- Freedom of Information Act 2000
- Local government transparency code 2015
- Information commissioner's office (ICO)

## **10 Terms & Definitions**

The terms data and information are used interchangeably in this policy.

All terms have the same definition as those included in the Freedom of Information Act 2000.

## **11 Enforcement**

Any user found deliberately contravening this policy or caught jeopardising the security of information that is the property of BHCC may be subject to disciplinary action and, where appropriate, legal action.

## **12 Review**

This document will be reviewed annually as a minimum or wherever there may be a change of influencing circumstances.

## **13 Appendix I**

### Information Access – Fees

1. Under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, BHCC can refuse to deal with a request that would cost more than £450 to process. The calculation of the cost can include:
  - Determining whether the requested information is held.
  - Locating and retrieving the information.
  - Extracting the information.
2. These regulations also allow the Council to recover some administrative costs incurred in meeting a request which costs less than £450. Enquirers will be notified if a charge is payable to answer their request and in those cases information will only be provided once the fee payment has been received.
3. The terms of the Regulations do not affect the Council's right to charge for publications and for certain information services otherwise offered on a fee-paying basis.
4. When estimating the cost of complying with a written request for information, the Council will take into account the staff time involved, charged at a fixed rate (currently £25 per hour per person) involved in the following activities:
  - Determining whether the information is held.
  - Locating the information, or a document which may contain the information.
  - Retrieving the information, or a document that may contain the information.
  - Extracting information from a document.
5. In general, where the cost of responding to a request in full exceeds the £450 limit, BHCC will respond to the enquirer stating that we will not be providing the information requested and explain the reason (i.e. the cost would exceed £450). However, we may offer to proceed with the processing of the request in exchange for payment of the relevant costs in full plus VAT at our sole discretion.
6. The decision on whether to provide a full response in such circumstances will rest with the Data Protection Manager in consultation with the SIRO and Information Governance Management. However in the first instance, the Council will discuss with the enquirer whether they would be prepared to modify the request to reduce the associated costs.
7. For requests estimated to cost £450 or less to fulfil, the Council will charge only for disbursements (i.e. postage, photocopying and/or cost to preferred formats) incurred in the course of preparing and sending a response.

8. Council can charge for disbursements regardless of the £450 limit referred to above and will exercise its discretion in this regard on a case by case basis dependant on whether the administrative costs of levying such charges would outweigh any income generated. VAT will be charged on any appropriate fees connected with an information access request, calculated at the standard rate applicable at the time. Where a book or booklet is provided in response to an information request, the VAT charged on the publication will be zero rated in accordance with the Government's standard VAT policy.
9. In certain circumstances, if the Council receives two or more related requests, the costs of answering them may be added together (or 'aggregated') to determine whether the limit has been exceeded.

These circumstances are as follows:

- The requests must be from the same person or from "different persons who appear to the public authority to be acting in concert or in pursuance of a campaign".
  - The requests must relate to the same or similar information.
  - They must have been received by the Council within a period of 60 consecutive working days.
10. Once the Council has calculated any relevant fees which may be payable in connection with an information access request, enquirers will be issued with a letter called a 'fees notice' and will be required to pay the costs specified therein before the Council will respond to the request in full.
  11. After a period of three months, any such request for which the fees have not been received will be deemed to have been withdrawn.

## 14 Appendix II

### Information Access – Appeals

1. BHCC is required to provide a straightforward process for appeals against its decisions on information access requests.
2. This process will:
  - Provide a fair reassessment of the handling of the request and of the decision made;
  - Be conducted by someone senior and impartial;
  - Be capable of reversing the original decision if required
3. Those wishing to appeal have 60 days in which to lodge their appeal. Normally the Information Commissioner (ICO) will not accept an appeal to the Information Commissioner's Office until the internal appeals process has been exhausted.
4. In the first instance those wishing to appeal should write to the Information Governance Team at [freedomofinformation@Brighton-Hove.gov.uk](mailto:freedomofinformation@Brighton-Hove.gov.uk) and explain why they are not happy with the Council's decision or handling of their request. The Team will seek to resolve issues raised informally within 20 working days.
5. If the enquirer remains unsatisfied with the outcome of the initial appeal a further appeal can be made to the Data Protection Manager.
6. A full written response will be made available to the enquirer within 25 working days of receipt of the formal appeal. If this is not possible the Data Protection Manager will provide a realistic date for response.
7. If the Data Protection Manager was directly involved in the management or handling of the original information access request, or the initial appeal, a suitably senior Council employee will assume responsibility for the consideration of the appeal and issue the final decision on behalf of the Council
8. If you remain dissatisfied with the outcome then you can appeal to the Information Commissioner who may investigate on your behalf:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545745 Web:  
[www.ico.gov.uk](http://www.ico.gov.uk)