
**FREEDOM OF INFORMATION
IMPLEMENTATION**

**Responsible Cabinet Member(s) - Councillor Don Bristow,
Resource Management Portfolio**

Responsible Director(s) - Paul Wildsmith, Director of Corporate Services

Purpose of Report

1. To inform of progress towards full implementation of the Freedom of Information (FOI) Act 2000 and to allow Council to consider related draft documents.

Background

2. The FoI Act is part of a wider group of policies to modernise government and to ensure that decision-making is more open and accountable. The Act applies across a range of authorities including central and local government, Health Authorities and the Police. The Act will mean a change in the way the Council manages its information and records and in the way it handles requests for information. The Council already has to release certain information in relation to audit, data protection, access to information and environmental regulations and the FoI Act fits into this framework. The Council must comply by 1st January, 2005 with the legal duties under the Act which are :-
 - (a) to respond to written requests for information within 20 working days, subject to certain exemptions; and
 - (b) to make some information available for the public without the need for a specific request to be made. This information to be defined in the Council's 'Publication Scheme'.
3. The Council's Publication Scheme was approved by Cabinet in November 2002 (Minute ref. C135(5)/Nov/02) and was subsequently approved by the Office of the Information Commissioner. The Scheme specifies types of information the Council publishes or intends to publish, the format in which it is or will be published and whether or not there is a fee for such information. The Scheme is available electronically on the Council's website and in hard copy at Council sites. The Council is required under the FoI Act to ensure its Scheme remains up to date and all Directors have been given delegated authority to revise the Scheme as and when necessary.

Information Governance Arrangements

4. In order to ensure that the Council has a strategic and co-ordinated approach to information management in general, an Information Governance Group (IGG) has been established to

act as a lead on all information issues including the requirements of the FoI and Data Protection Acts, records management and data sharing. The purpose of the Group, chaired by the Chief Internal Auditor and comprising the Council's Information Manager and senior officer representation from all departments, is to develop and monitor delivery of a work programme that ensures the Council conforms to relevant information legislation and adopts best practice in its information policies, procedures and standards. The Information Manager is the Council's contact for all FoI matters.

5. Information Governance Sub-Groups have been established in each department to implement the work programme identified by the IGG and to promote awareness and adherence to information governance issues. Departmental Information Governance Liaison Officers have been nominated to act as points of contact with the Information Manager on all information rights issues including FoI, data protection and information sharing.
6. In addition, Freedom of Information Champions have been appointed at both Member and Officer level, to help promote the workings of the FoI Act. The Member Champion is Councillor Bristow and the Officer Champion is the Borough Solicitor.
7. The IGG has overseen development of draft Freedom of Information and Records Management Policies, discussed the production of a Freedom of Information Procedure Manual and considered FoI training/publicity arrangements and the latest information concerning fees for FoI requests.

Freedom of Information Policy

8. A draft FoI Policy has been compiled which sets out the Council's commitment to implementation of the Freedom of Information Act and the principle of open and accountable decision-making (see **Appendix A**). The Policy sets out the Council's approach to FoI, provides an overview of the Act, outlines the responsibilities of employees and members, details how the Council's commitment will be met and covers monitoring and review arrangements. The Policy complements the Council's existing Data Protection Policy since the two pieces of legislation are intrinsically linked.

Freedom of Information Procedure Manual

9. An FoI Procedure Manual is under development to underpin the draft FoI Policy. This is to be a comprehensive reference document for all employees on FoI issues and will be available electronically on the intranet and as a hard copy in selected Council offices; the departmental Information Governance Liaison Officers will also have copies. The Manual will give detailed guidance upon the role of the Information Manager and departmental Information Governance Liaison Officers in the facilitation and co-ordination of responses to FoI requests, the processing of FoI requests by departments, the application of exemptions, links with related legislation including the Data Protection Act 1998 and Environmental Information Regulations and advice on how to service requests for information for organisations associated with the Council.

Records Management Policy

10. Good records management by employees and Members underpins the whole freedom of information ethos. A draft Records Management Policy has been produced (see **Appendix B**) to assist compliance with the 'Code of Practice on the Management of

Records' issued by the Lord Chancellor's Department under sec.46 of the FoI Act. Records must be managed effectively throughout the organisation and with due regard to specified legislation, professional principles and guidelines. Compliance with the Policy will ensure that the Council can provide evidence and demonstrate accountability in its decision making process and facilitate responses to any FoI requests.

11. As implementing robust records management across the Council is a longer term project, the Policy will be underpinned by the formulation of an implementation programme.

Fees

12. In a speech to the Society of Editors on 18th October, 2004, Lord Falconer, the Constitutional Affairs Secretary, announced that there would be no charge for freedom of information requests that cost public bodies less than £450 to retrieve and collate the relevant information. Final formal guidance from government on fees regulations is due to be issued in November 2004. Given the likely timing of such guidance, it is necessary to seek delegated power for the Director of Corporate Services to set fee levels in accordance with the fee regulations.

Training

13. A vital part of preparing for Freedom of Information is to ensure that all employees have appropriate training. An external training provider has been engaged to hold four half day training sessions for Senior Managers and Members. This training is due to take place in late November 2004 with the requirement that Senior Managers then brief employees in their teams during December 2004. The training will refer to the draft FoI Policy and FoI Procedure Manual in further detail. The training will be supplemented in due course by the roll out of an intranet-based training package across the Council.
14. Additional bespoke training sessions by the Information Manager and Solicitor responsible for FoI matters are planned for departmental Information Governance Liaison Officers and Council Members.

Publicity

15. Since March 2004, the Information Manager has conducted numerous awareness raising sessions with departments, teams and organisations where FoI will impact e.g. parish councils. There has been a regular article in the monthly 'Flyer'; posters have been printed and circulated to IGG members for distribution around their respective department, divisions and sections, an FoI 'frequently asked questions' leaflet was attached to October payslips and the Information Manager submitted a progress report to Joint Consultative Committee on 19th October, 2004 upon implementation of the FoI Act and requested comment, as appropriate, upon the draft FoI and Records Management Policies.
16. The intranet has a section dedicated to the FoI Act, the workings of the IGG and includes relevant externally produced documents. The FoI Policy, FoI Procedure Manual and Records Management Policy will be posted here in due course.
17. Employees who do not have access to computers will be offered drop-in sessions where the Information Manager will give a short presentation on the workings of the Act. It is important that awareness is raised with these employees as they may well be on the

receiving end of a written request for information.

18. The Information Manager is also raising awareness in schools with head teachers, bursars and governors and other organisations with which the Council has close links such as the PCT and Darlington Partnership.

Outcome of Consultation

19. Consultation has taken place with Joint Consultative Committee and comments received have been taken into account in the production of the draft FoI and Records Management Policies.

Legal Implications

20. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

21. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

22. The issues contained within this report are required to be considered by Council.

Recommendation

23. Council are requested to :-
 - (a) Approve the draft Freedom of Information and Records Management Policies.
 - (b) Grant delegated power to the Director of Corporate Services to set fee levels for FoI requests in accordance with Government guidance, and that this information be incorporated within the Council's FoI documentation.
 - (c) Note the arrangements for staff training and publicity and the development of the FoI Procedure Manual.

Reasons

24. The recommendations are supported to assist Council compliance with the requirements of the Freedom of Information Act 2000.

Paul Wildsmith
Director of Corporate Services

Background Papers

- (i) Freedom of Information Act 2000
- (ii) Codes of Practice issued under the Freedom of Information Act 2000 on access/disclosure of information and records management.

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Draft Freedom of Information Policy

Policy statement

Darlington Borough Council will endeavour to comply fully with the requirements of the Freedom of Information Act 2000 (the Act) and associated Codes of Practice.

Purpose of the Act

The Act provides an over-arching right of access to information held by the Council, subject to exemptions, from 1st January 2005.

Overview of the Act

Obligations

Two main obligations on the Council are imposed under the provisions of the Act:

1. To make available a significant amount of information by use of a Publication Scheme
2. From 1st January 2005, to provide a full right of access to all information not included in the Publication Scheme (subject to exemptions)

The Council has complied with the first obligation and the Publication Scheme was approved by the Information Commissioner on 28th February 2003. The Scheme specifies the types of information the Council routinely publishes, in what format and whether or not there is a charge for the information.

Under the second obligation, the Act grants two distinct rights to persons requesting information :

1. To be informed in writing by the Council whether or not it holds the information
2. If the Council does, and the information is not subject to an exemption or exemptions, the right to have that information communicated to them within 20 working days

The right of access to information can be exercised by anyone including individuals, company representatives, organisations and Council employees. Requests are not confined to the local area and can come from overseas. Requests must be writing and include a name and address for communication but do not have to quote the Freedom of Information Act. Where possible, the Council will have to supply the information in the applicant's preferred format or offer them the ability to inspect the information in person. The Council also has an obligation to offer assistance to applicants.

Fees

Unless otherwise specified information made available through the Publication Scheme will be free of charge.

The Council may charge an appropriate fee for dealing with a specific request for information not listed in the publication scheme. This will be calculated according to the 'Fees Regulations' published by the Information Commissioner.

Exemptions

The Act sets out 23 exemptions, some of which are subject to application of the ‘public interest test’ (‘qualified’ exemptions). The public interest test will determine whether the public interest in maintaining the information outweighs the public interest in disclosing it.

‘Absolute’ exemptions are not subject to the public interest test.

Employee and elected member responsibility

Both employees and elected members have a responsibility to comply with the requirements of the Freedom of Information Act by ensuring that any information requests are handled in accordance with the guidelines specified by the Council.

The Council’s commitment

Darlington Borough Council has always upheld the principle of open and accountable decision-making. In the light of new legislation the Council will continue to do so as follows:

- by ensuring that Council’s Publication Scheme remains up to date
- by ensuring all employees are aware of their responsibilities under freedom of information legislation by providing them with a copy of this policy and relevant guidance notes.
- by providing awareness training to managers and individuals
- by nominating the Chief Internal Auditor as the officer who has overall responsibility for monitoring the legislation and dealing with any enquiries
- by nominating through Directors departmental Information Governance Liaison Officers to deal with departmental enquires and to provide a communications network to ensure compliance with the Act
- by adopting a robust records management framework to assist compliance with the Act

Monitoring and review

This policy will be monitored by the Chief Internal Auditor as the nominated officer and will be reviewed annually to ensure that it remains up to date and relevant.

Draft Policy on Records Management

1. Introduction

Darlington Borough Council recognises that records are important corporate assets as they are a key resource to effective operation and accountability and reflect the business requirements of the Council. Such records therefore, require proper management throughout their life; from creation to disposal and with due regard to legal obligations, professional practice and the Council's business needs. Compliance with this policy will ensure that the Council can provide evidence and demonstrate accountability in its decision making process and facilitate responses to any FOI requests.

2. Scope

This policy's purpose is to ensure that records are managed effectively throughout the organisation and with due regard to specified legislation, professional principles and guidelines (see appendix 1).

The ISO 15489 definition of a record is:

'information created, received and maintained as evidence or information by an organisation or person, in pursuance of legal obligations or in the transaction of business'

A record is any recorded information regardless of medium (including paper, electronic, email, microform, audio-visual etc.) which is created, collected, processed, used, stored and /or disposed of by the Council and those acting as its agents in the course of a Council activity.

The policy applies to all departments, divisions, sections, services, employees and councillors of the Borough Council.

3. Aims

The policy aims to define a framework for managing records to ensure that the Council:

- creates and captures authentic and reliable records to demonstrate evidence, accountability and information about its decisions and activities
- facilitates auditing and protects legal and other rights
- encourages good record keeping practices by all employees and councillors
- ensures that records can be easily accessed to aid compliance with legislation such as the Freedom of Information Act 2000 and the Data Protection Act 1998
- ensures that records can be interpreted with ease to establish the context of the record, who created the document, during which business process and how the record is related to other records
- ensures that records can be trusted to reliably represent the information that was actually used in, or created by, the business process and its integrity and authenticity can be

demonstrated

- the record can be maintained through time so that the qualities of accessibility, interpretation and trustworthiness can be maintained for as long as the record is needed. This is particularly important for electronic records.

4. Policy statement

It is the policy of the Council that authentic, reliable and usable records are created, which are capable of supporting business functions and activities for as long as they are required. It applies to all records of the Council.

This will be achieved by creating a procedural framework which ensures that:

- records are made accessible to enable well-informed and proper judgments to be made
- records are kept securely and protected from accidental loss, destruction and unauthorised access
- records are kept for no longer than necessary, in accordance with legal and professional obligations
- records are disposed of appropriately, in accordance with legal and professional obligations
- employees and councillors are made aware of, and trained in, the management of records within their sphere of work or responsibility

The Council will ensure that the appropriate technical, organisational and human resource elements exist to make this possible.

5. Role and responsibilities

All employees who create receive and use records will have records management responsibilities at some level depending on the nature of the role they fulfil.

Corporate Management Team (CMT)

- Responsible for approving and overseeing a corporate management framework for the management of records within the Council as set out in this policy
- Responsible for ensuring that any records management functions are supported in their work in terms of commitment and resources

Departmental Management Teams (DMT's)

- Responsible for ensuring that any policies, procedures or protocols agreed by Corporate Management Team are implemented within the department/service
- Responsible for ensuring that appropriate employees are designated to assist with the implementation of records management procedures within the department/service
- Responsible for ensuring that employees and councillors are supported in terms of training and development in adhering to records management policy and procedures

- Responsible for ensuring that concerns are brought to the attention of Corporate Management Team at the earliest opportunity

Information Governance Group (IGG)

- A council-wide forum for discussion concerning information legislation and the issues surrounding the information rights agenda
- Responsible for agreeing method of training for employees and councillors
- Report to respective DMTs and CMTs on progress
- Departmental IGG sub-groups to be responsible for departmental issues relating to records management

Information Manager

- Will provide the link between data protection, freedom of information and records management practices. Where appropriate, will co-ordinate activities such as devising and maintaining a corporate Records Retention Schedule and reviewing the Council's Publication Scheme.

Individual employees/councillors

Any and all records created by employees and councillors of the Council are corporate records and as such are the property of the Council. Individual employees are therefore responsible for ensuring that:

- Actions and decisions taken in the course of Council business are properly recorded
- This policy is adhered to
- Records are disposed of in accordance with the retention policy of that department/division/section

6. Training and awareness

The Information Manager will implement the policy by devising a records management programme that will include the creation of a series of corporate standards, guidance notes and procedures.

Since all employees have responsibility for records management at some level it is essential that everyone understands their records management responsibilities as set out in this policy.

Senior managers will ensure that employees and councillors responsible for managing records are appropriately trained and that all employees and councillors understand the need for effective records management.

A records management training programme will be established to ensure that employees and councillors are aware of their obligations in relation to the Data Protection Act 1998, the Freedom of Information Act 2000 and records management in general.

7. Records creation and record keeping

Each department must have in place a record keeping system (paper or electronic) that documents its activities and provides for quick and easy retrieval of information. It must take into account the legal and regulatory environment specific to its area of work. The system will include:

- Records arranged and indexed in a way that they can be retrieved quickly and efficiently
- Records are linked with the Council's Freedom of Information Publication Scheme
- Procedures and guidelines for referencing, titling, indexing and version control and security marking are evident
- The ability to cross reference electronic and paper records management documentation
- A guidance manual on how to use the system

8. Record maintenance

The record keeping system must be maintained so that the records are properly protected, and can be easily located and retrieved. This will include:

- Ensuring that adequate storage accommodation is provided
- Monitoring the movement and location of records so that they can be easily retrieved and provide an audit trail
- Controlling access to the information
- Identifying vital records (see appendix 2) and applying the appropriate protection, including a business recovery plan
- Ensuring non-current records are transferred in a controlled manner to a designated records centre rather than stored in offices

9. Records retention and disposal scheduling

With increasing public access to Council records, it is important that disposal of records happens as part of a managed process and is adequately documented. Therefore departments must have in place clearly defined arrangements for the appraisal and selection of records for disposal or destruction, and for documenting this work. The policy recognises that records retention periods may vary between departments.

The retention and disposal schedules should ensure that:

- The appropriate records are reviewed and disposed of or transferred to a local archive or storage facility each year. This is in accordance with the Retention Guidelines for Local Authorities¹, specific department requirements and DBC procedures for destroying confidential material and magnetic media
- Documentation of the disposal /transfer of records is completed and retained
- Records selected for permanent preservation are transferred to Durham County Record Office or Darlington Public Library as soon as possible
- An intended disposal/review date must be captured when creating electronic records
- Records which have been requested and supplied to satisfy a Freedom of Information request are not destroyed, even if the official retention period of that record may have expired. The Freedom of Information request in itself becomes a record.

It is envisaged that an overall corporate Retention Schedule will be created with specific departmental schedules devised by the IGG sub-groups.

¹ Retention Guidelines for Local Authorities, Records Management Society of Great Britain, 2003

10. Records sharing

Joint working takes place across many agencies and between partnerships. In many cases, information is shared and it is expected that any partners with whom we share information be compliant with the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000. Where the Council has signed up to local or regional data sharing protocols, our obligations under these protocols must be adhered to.

11. Legislation

Recent legislation, particularly the Freedom of Information Act 2000 and Data Protection Act 1998 have had a significant effect on the record keeping arrangements of public authorities.

Under section 46 of the Freedom of Information Act 2000 the Lord Chancellor had a duty to issue a code of practice on records management². Compliance with this code will ensure that public authorities are able to meet the legislative obligations under the Freedom of Information Act 2000 and associated legislation.

'Any freedom of information legislation is only as good as the quality of the records to which it provides access. Such rights are of little use if reliable records are not created in the first place, if they cannot be found when needed or if the arrangements for their eventual archiving or destruction are inadequate. Consequently, all public authorities are encouraged to pay heed to the guidance in the Code'. (Extract from ref 1, para 3 foreword).

12. Performance measurement

The Information Manager will report periodically to the Chief Internal Auditor, the nominated officer responsible for information governance. Performance indicators will include:

- Response time in providing information from the records or retrieving the records themselves
- Results from selective audit of departmental records
- Number of complaints received by the Council regarding Data Protection and Freedom of Information requests
- Number of referrals to the Office of the Information Commissioner

13. Policy monitoring and review

Compliance with the policy, related standards and guidance will be monitored by the Information Manager in collaboration with departmental Information Governance Liaison Officers.

This policy will be reviewed by the Information Manager two years after implementation and then on a programme of review in line with associated Council policies such as the Freedom of Information Act 2000 policy and Data Protection Act 1998 policy.

² Lord Chancellor's Code of Practice on the Management of Records under sec. 46 of the Freedom of information Act 2000

Appendix 1 - Related legislation, standards and policies

Main legislation

Freedom of Information Act 2000
Data Protection Act 1998
Local Government (Access to Information) Act 1985
Local Government Act 1972 and 2000
Public Records Act 1958 and 1967

Professional standards

BS 4783 Storage, transportation and maintenance of media for use in data processing and information storage

ISO 17799 Standard on Information Security Management

ISO 15489 Standard on Best Practice in Records Management

BSI DISC PD 0008:1999 Code of practice for legal admissibility and evidential weight of information stored electronically

BSI DISC PD 0010: 1997 the principles of good practice for information management

BSI DISC PD 0012: Guide to the practical implications of the Data Protection Act 1998

Professional guidance

Public Record Office (now The National Archives) Standards

Retention Guidelines for Local Authorities issued by the Records Management Society of Great Britain, 2003

Lord Chancellor's Code of Practice on the management of records issued under sec. 46 of the Freedom of Information Act 2000. November 2002.

Internal policy

Best Value Performance Plan

Freedom of Information Policy

Data Protection Policy

Darlington Borough Council E-government strategy

Appendix 2 - Key definitions

Document

A document is usually taken to be 'the smallest unit of filing, generally a single letter, form, report' (Robek, Brown and Stephens, 1995). Not all documents are records; for example, library and reference material, stocks of publications and documents retained for distribution, extra copies made for convenience and personal papers are not records in the terms of this policy.

Electronic document

An electronic document that has been captured within the Council's ICT systems i.e. office application such as Word, Excel, Outlook, shared network drives etc. and any electronic document management system content. It therefore applies to documents generated, scanned images of paper documents and emails.

File

A collection of documents; either a physical file of paper documents or a notional collection of electronic documents with a common theme.

Record

The ISO definition is:

Information created, received and maintained as evidence of an activity by an organisation or person in pursuance of legal obligations or in the transaction of business. It is not restricted by format or storage medium and includes paper, emails, spreadsheets, word processed documents, static HTML pages and records managed in structured database systems.

Records management

The ISO definition is:

The field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records.

Retention schedule

A list of the records series with a timetable detailing the period of time for which records must be kept before final disposal or destruction.