

5. Polisi Deddf Rhyddhau Gwybodaeth – Freedom of Information

Policy Statement

Llanbedr Community Council (the Council) supports the objectives of the Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (the Regulations) and is committed to full compliance by

- Ensuring that as much information as possible is made available to the public through the Publication Scheme;
- Ensuring that it responds in a timely manner to requests for information and provides advice and assistance to applicants and
- In cases where information is covered by an exemption under the Act, to consider carefully whether or not the information should be released.

The purpose of this Policy is to assist the Council fulfil its obligations under the Act and to provide guidance to the public regarding the Council's responsibilities under the Act and Regulations.

2 Scope of Policy

This policy is relevant to any information recorded and held by the Council or information held by somebody else on behalf of the Council. For the Regulations, it also includes information held by the Council on somebody else's behalf.

3. The Publication Scheme

The Council will:

- Ensure that as much information as possible is made available free of charge on its website in both English and Welsh as appropriate.
- Update and add further information on a regular basis.

4. Specific Requests for Information

The Council will follow this procedure for dealing with requests.

On receipt of a request (by post or email) the Clerk shall discuss the request with the Chairman or in his absence the vice-Chairman. Together the Clerk/Chairman (or vice-Chairman) shall determine the appropriate course of action and shall, if necessary, liaise with other Council members to formulate a response.

- Respond to each written request for information within 20 working days (unless an exemption applies and it needs more time to consider the request).
- Inform the applicant, providing a full explanation, if a request is refused.
- Ensure that the interests of any third parties affected by a decision to disclose will be taken into account.
- Provide advice and assistance to the applicant and transfer requests to other relevant organisations when the Council does not hold the requested information.

Details of all requests and responses shall be made available to Councillors at the next

scheduled or special meeting of the Council.

4.1 Exemptions

Freedom of Information Act 2000

There are 23 exemptions under the Act (see Appendix 1 for those which apply to local government).

The Council may decide that the requested information is exempt under the Act and will therefore refuse to disclose that information.

Where part of a document contains exempt information, the Council will consider whether the rest of the document can be made available to the applicant.

Absolute exemptions

The Council will not confirm or deny that the information is held and will not disclose the information.

It will notify the applicant within 20 working days, giving full reasons for its decision.

Qualified exemptions

If the Council decides that one of these exemptions applies, it will have to apply the public interest test.

The Council will inform the applicant within 20 working days that an exemption applies and when a decision will be taken.

Environmental Information Regulations 2004

The majority of the exceptions under the Regulations are subject to a public interest test. The Council will respond in accordance with the procedure for the Freedom of Information Act.

See Appendix 2 for the exceptions.

Responsibilities

The Clerk and Chairman are responsible for deciding to refuse requests in consultation if necessary with the Council.

4.2 Repeated and vexatious requests

The Council reserves the right to refuse repeated and vexatious requests.

4.3 Information about third parties

Commercial/confidential information

When dealing with the above requests, the Council will consult with relevant third parties before reaching a decision.

Information about Councillors

The Council cannot disclose information produced by or in the possession of individual councillors unless they are part of the Council's records or is information generated in their role as Councillors. If the information forms part of a record held by the Council, then any request for their disclosure will be processed in accordance with this Policy.

Information about staff

The Council will not disclose personal details which would adversely affect the privacy of an individual in their personal life, in contravention of the first principle in the Data Protection Act which states that information shall be processed fairly.

When deciding whether or not to disclose personal information the Council shall consider the following factors:

- whether the information is sensitive
- consequences of disclosure;
- the reasonable expectations of the individual; and
- whether there is a legitimate interest in disclosing the information

4.4 Translation

Since the Act refers to information 'held' at the time of the request, there is no requirement to translate any documents in response to a request. However, in accordance with the Council's language policy, and to comply with the spirit of the Act, the Council is committed to translating the requested information. It will inform applicants that it will not necessarily be able to provide the translation within 20 working days and will be able to charge applicants in accordance with conditions set out in the fees policy (Appendix 3).

4.5 Fees

Unless otherwise stated, the information contained in the Publication Scheme is free of charge.

See the separate policy in Appendix 3.

5. Monitoring, review and evaluation

The Council will

- Maintain a record of all requests made under the Act.
- Monitor the numbers, response times, complaints, exemptions and appeals.
- Consider whether to add any documents to the Publication Scheme.
- Produce regular reports for each scheduled Council meeting.

6. Complaints

If the applicant is dissatisfied with the response to his request for whatever reason, he has a right of appeal for a review of the decision.

The internal review procedure is attached to this policy (Appendix 4)

7. Failure to comply with the Act

a) The powers of the Information Commissioner

The Commissioner may serve

- A decision notice if he is of the opinion that the authority has not appropriately to a request for information.
- An information notice requiring the authority to provide information to enable the commissioner to fulfil his duties under the Act
- An enforcement notice if he considers that the Council has not complied with any of the requirements under the Act.

If the Council refuses to comply with any of these notices, it may lead to contempt of court proceedings which could result in two years imprisonment or a fine imposed on the Council or an individual of the Council.

If the Council or an individual of the Council is found guilty of intentionally destroying or concealing information in order to avoid responding to a request under the Act, they may be liable to a fine of up to £5,000.

8. Relationship with other legislation

Data Protection Act 1998

Individuals also have rights under the Data Protection Act 1998.

If an individual applies for information about themselves, there is an absolute exemption under the Act (section 40(1)) and the request should be dealt under Data Protection legislation.

Information about third parties will not be disclosed if to do so would breach the

Data Protection principles.

If an individual exercises his right under the Data Protection Act (section 10) to request that the Council ceases processing his personal information, and a third party requests that information, the Freedom of Information Act specifies that the decision to disclose must be based on the public interest test.

Appendix 1

Freedom of Information Act 2000

Below are exemptions relevant to local government:

Absolute Exemptions

s21 Information that is otherwise available, namely information that is relatively easy for the public to access another way rather than through the Freedom of Information Act 2000.

s32 Court records e.g. documents that have been filed or placed in the hands of the court.

s40 Personal information about the applicant – the request will be dealt with under the Data Protection Act 1998.

Personal information about a third party – if its disclosure were to contravene the principles of the Data Protection Act.

s41 Information given in confidence by anybody

s44 Information prohibited from being disclosed e.g. under legislation; its disclosure would mean contempt of court or incompatible with any one of the European Community's commitments

Exemptions where the "public interest test" must be used:

If the Council decides that one or more of the exemptions apply, it must disclose the information unless it decides that the 'public interest' requires adherence to the exemption.

s22 Information intended for future publication i.e. in circumstances where it is reasonable not to disclose the information until the day it is to be published.

s30 Information regarding investigations and court cases undertaken by a public authority e.g. information regarding criminal investigations and cases and information received from confidential sources for criminal or civil court cases.

s31 Information relating to law enforcement

s33 Investigation functions

s36 Information which would prejudice the effective conduct of public affairs.

s38 Information where its disclosure would endanger the physical or mental health or safety of any individual.

s39 Information regarding the environment – coming under the Environmental Information Regulations 2004.

s40 Personal information regarding a third party – where the individual to which the information applies has exercised his/her right under the Data Protection Act 1998 to object to it being processed.

s42 Information which comes under the professional legal privilege.

s43 Information regarding commercial interests where the information is a trade secret or where its disclosure would harm or be likely to prejudice the commercial interests of any person.

Appendix 2

Environmental Information Regulations 2004

Below are the exceptions under the Regulations. Each one, with the exception of regulation 13, are subject to a public interest test and if the information relates to emissions, the Council cannot refuse to release information based on confidentiality of proceedings of a public authority, commercial confidentiality, voluntary supply or protection of the environment.

5(6) Any other law that would prevent the disclosure of environmental information shall apply

12(4)(a) The information is not held

12(4)(b) The request is manifestly unreasonable

12(4)(c) The request is too general

12(4)(d) Material in the course of completion, unfinished documents or incomplete data

12(4)(e) Disclosure of internal communication

12(5)(a) International relations, defence, national security or public safety

12(5)(b) Administration of justice

12(5)(c) Intellectual property rights

12(5)(d) Confidentiality of the proceedings of a public authority

12(5)(e) Commercial confidentiality

12(5)(f) Information of which its disclosure would have a detrimental effect on the person who voluntarily provided the information

12(5)(g) Protection of the environment

13 Personal data

Appendix 3

Charging Policy

Freedom of Information Act

In accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, the Council's policy will be as follows:

1. When calculating the cost of complying with a written request, the Council will calculate the time taken by an individual, charged at a rate of £25 per hour, to do the following:

- i) Determining whether the Council holds the information
- ii) Locating the information or document
- iii) Retrieving the relevant information
- iv) Extracting the relevant information from a document.

2. If the Council decides to comply with a request that will exceed the limit of £450, it is entitled to charge for the following:

- i) The cost of carrying out the work noted in i)-iv) above
- ii) The cost of notifying the applicant whether or not it holds the information
- iii) The cost of communicating the information (postage, printing and photocopying costs).

3. Disbursements

In addition to the fees, the Council is also entitled to charge for the following, regardless of the cost of complying with a request. These are in addition to any fees that may be charged.

- i) the cost of complying with the applicant's request to receive information in a particular format
- ii) the cost of reproducing or copying documents. The Council will charge the following fees for Freedom of Information requests:

Photocopying or Printing:

A4 £0.10 Colour A4 £0.50
A3 £0.20 Colour A3 £1.00
CD £0.25 Audio Tape £2.00 Video/DVD £2.50

Maps Depending on application

- iii) costs of postage, faxing, etc

However, the Council will not charge anything if the total of the above costs is less than £10.

4. Translation

The Council will charge for translating documents as follows:

- i) Where the number of words is in excess of 400
- ii) Where the request is for a translation into a language other than English or Welsh

The fee will be calculated on the basis of the reasonable costs of the translation, which may include the costs incurred in engaging freelance translators.

5. If the Council estimates that the cost of complying with a request is less than £450, the Council will only charge for postage, printing and photocopying costs and other methods of transmitting the information, in accordance with the Council's specified rates, together with the cost of providing information in a particular format, including translations. The Council is not obliged to comply with requests that would be estimated to cost in excess of £450. In these circumstances, the Council will discuss the matter with the applicant to find out whether he/she is prepared to adjust or modify his/her request, in order to bring down the cost.

6. Where the Council intends to charge for providing the information, the applicant will be issued with a Fees Notice in accordance with section 9 of the Freedom of Information Act 2000. If the specified fee is not received within 3 months of sending the Notice, the request will not be processed.

7. If the Council receives two or more similar requests from one person or different persons in concert or in pursuance of a campaign within any sixty consecutive working day period, it will aggregate the cost of complying with all of them. If the total cost exceeds £450, it will not be obliged to comply with any of them.

Environmental Information Regulations

The Regulations note that a reasonable fee may be charged for environmental information.

The Council will charge the following fees for staff time spent in preparing information in response to a request. This includes time spent finding, retrieving information and putting it into a specific format.

Number of questions

1-2 £25 3-5 £42 >5 £66

A fee may not be charged for allowing applicants to view public registers or to call into offices to see information.

Appendix 4

Procedure for dealing with requests for internal reviews under the Freedom of Information Act 2000

The following guidelines set out how to deal with requests for reviews made under the above legislation.

Stage 1: Internal review procedure

If the complainant is not happy with the response to his request made under the Act, he may ask for an internal review. The Treasurer or nominated Councillor will conduct the review, within 20 working days.

Stage 2: External review procedure

If the complainant is not happy with the outcome of the internal review, he has the right to appeal to the Information Commissioner by contacting him at the following address:

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

Operational Procedure for Internal Review

- 1. The Clerk/Chairman receives the request for a review.**
- 2. The Clerk/Chairman shall record this and send the complainant a letter of acknowledgment which will state that the target date for a response is 20 working days. If it is clear that the Council will not be able to respond within the target date, the complainant will be contacted and a reason for the delay will be provided.**
- 3. The person dealing with the matter will conduct an internal review and either:**
 - Ask for more time to consider the matter**
 - Confirm the original decision not to disclose the information**
 - Revise the original decision by agreeing to release part of the information that had been previously withheld**
 - Reverse the original decision and disclose all the information that had been withheld**

The reviewer will contact the complainant, with a copy to the Clerk..

- 4 a) If the outcome of the review is to confirm the original decision, the complainant should be notified that he has a right of appeal to the Information Commissioner.**
- b) If the outcome is that previously withheld information is to be released, this information should be sent to the complainant as soon as possible.**
- c) If the outcome of the review is that the Council's internal procedures have not been followed by staff, the Council should apologise to the complainant.**

The reviewer shall keep a record of the request for a review, the date of receipt and the completion date. Any relevant documentation should be kept on the file of the original request.