

**LONDON BOROUGH OF BRENT
MEETING OF THE EXECUTIVE
17th January 2005**

Report from the Director of Corporate Services

For action

Wards Affected:
All

**Report Title: FREEDOM OF INFORMATION ACT –
INFORMATION PROVISION ARRANGEMENTS**

Forward Plan Ref: Cor-04/05-81

1. Summary

- 1.1. The Freedom of Information Act 2000 came fully into force on 1st January 2005. The Act gives any person making a request for information to a public authority the right:
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request (whether in electronic or printed form); and
 - (b) if that is the case, to have that information communicated to them within 20 working days.
- 1.2. Full details of the regulations relating to charging for the provision of information under the Act were received by the authority on 17th December. This report deals with the decisions that need to be made by the authority in line with those regulations.

2. Recommendations

- 2.1 That in line with the options available to local authorities under the charging regulations for the Freedom of Information Act, the Executive determines that the Council's policy should be not to provide information where the cost of doing so would be greater than "the appropriate limit" as defined by the regulations (this is where the costs are estimated to be greater than £450 as calculated in line with parameters set in the regulations).
- 2.2 That, in accordance with the decision taken by the Executive on 13th December, for requests where the costs fall below "the appropriate limit" the authority levy the allowable charges under the Act.

- 2.3 That the position is reviewed and a further report providing details of the experience of requests received is brought to members after 6 months.

3. Detail

3.1. Freedom of Information Act

The Freedom of Information Act requires all public authorities, including Councils, to be open with information.

- 3.2. The Act gives a general right of access to all types of recorded information held by the Council. It sets out exemptions from that right and places various obligations upon the Council. The Act comes into force in two stages:

- Since February 2003 the Council must have adopted and maintained a Publication Scheme showing the information it publishes and where it can be found. The Council has met this obligation and Brent's Publication Scheme which came into effect in February 2003. It is intended that the Scheme be reviewed in early 2005.
- From January 2005 any person who makes a request to the Council for information must be informed in writing whether the Council holds that information and, if so, subject to exemptions, must be supplied with that information. The information must generally be supplied promptly and in any event within 20 working days.

- 3.3 The request is required to be in writing. No reason is required to be given for the request and it is not even necessary that it be stated that the request is made under the Act. Although the right is for access to information and not to documents, an applicant may express a preference for being provided with (i) a copy of the information, (ii) an opportunity to inspect records containing the information, or (iii) a digest or summary of the information. A public authority must give effect to that preference so far as reasonably practicable

- 3.4 Two codes of practice have been issued under the Act concerning the complying with the new statutory requirements and records management. The Council is required to have regard to these codes and their content underlies much of the advice given in this report. In addition the Department of Constitutional Affairs (DCA) has issued guidance including a model action plan to help public bodies achieve compliance with the Act.

- 3.5 On 13th December 2004 the Executive approved an extensive report covering the Council's preparations to meet the requirements of the Act and taking a number of key decisions covering: -

- Freedom of Information Policy
- Procedures
- Roles and Responsibilities
- Timescales
- Future work on records management

- 3.6 In relation to the charges for requests, regulations were still awaited from the Department of Constitutional Affairs and decisions made were as follows: -
- “Charges should be levied for dealing with FoI requests as set out (below):
- 1 Regulations are still awaited but the informal indications from the government are that there will be no charge for information that costs less than £450 to produce.
 - 2 Further details, including the position regarding information that costs over £450 to produce, are awaited.
 - 3 While it may not be possible to charge fees for most FoI requests, it is proposed that charges are levied to the maximum levels allowed under the Act and Regulations where permitted. This would help to cover some of the significant additional costs that the Council will incur and help to reduce the number of vexatious requests.
 - 4 It is also proposed to charge photocopying and postage costs in all cases.
 - 5 It is clear from this that at best the income from fees will only cover a small proportion of the Council's additional cost in meeting the requirements of the FoI. The remainder will have to be met by the Council from existing resources. It is proposed that all the income from requests, where costs total above £450 will accrue to the service area concerned. A new administrative system will be needed to process these charges”.
- 3.7 Officers finally obtained details of the regulations on 17th December 2004. These comprise Statutory Instrument 2004 No. 3244 “Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004” and detailed guidance relating to them.
- 3.8 Under the Act an authority is not required to comply with a request for information under the Act if the cost of compliance would exceed an “appropriate limit”. The regulations define an “Appropriate Limit” in the case of the Council of £450. In estimating whether this limit would be exceeded, the costs of determining whether the information is held and then of locating, retrieving or extracting the information can be taken into account. Time spent by anyone carrying out these activities on behalf of the Council must be treated as costing £25 per hour only.
- 3.9 If the cost of compliance with a particular request is estimated not to exceed this limit the information requested must (subject to any applicable exemptions) be provided free of charge (with the exception of charges that can be levied for such specified items as postage, printing and copying). No costs in respect of the time of staff or others spent responding to requests can be charged for..
- 3.10 In relation to items where the costs, calculated in this prescribed manner, are above £450 (“the appropriate limit”) the guidance states: -

“Requests costing more than the appropriate limit

If requests would cost more than the appropriate limit to answer, the public authority is **not** obliged under section 1 of the FOI Act to answer it. However, in deciding how to handle the request, the authority **must take account of section 16(1) of the Act**. Section 16(1) requires the authority to “*provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it*”. If a request is particularly wide-ranging, and therefore likely to be expensive to answer, the authority should consider discussing this with the applicant and see if the question could be refined to a more manageable level, or resubmitted in part, to bring it below the appropriate limit.

If after providing advice and assistance as required under section 16, the request is still over the appropriate limit, the authority must inform the applicant that it estimates that the appropriate limit has been exceeded as soon as possible, and no later than the usual time limit for answering requests. It then has a number of options.

- It can decide not to provide the information (there may be circumstances in which other factors have to be taken into account in deciding whether or not to provide the information).
- It can answer and charge any permitted fee.
- It can answer without charging”.

3.11 Whilst in relation to all other elements of the regulations, the decisions made by the Executive on 13th December determine the precise approach that will be taken to implementation, in relation to these latter options a decision is now required. Although there is a more generous charging regime available where information is provided voluntarily even though it is estimated that the appropriate limit will be exceeded, time spent in complying with the request can still only be charged at £25 per hour. The work of dealing with requests under the Act will be almost completely dealt with by existing Council staff resources with no additional resources allocated.

Given the unknown position regarding volumes, complexity and resource requirements to deal with such requests, officers recommend that members determine that the Council’s policy should be not to provide information estimated to cost more than the appropriate limit to provide but that this policy should be reviewed, including considering the number and estimated costs of such requests, six months after the coming into force of the rights under the Act. It is considered that this is a reasonable approach given that we do not know the extent of the burden likely to be placed on us and our first duty is to meet the statutory requirement.

For applications below the appropriate limit, charges will be levied in accordance with the decisions made on 13th December.

3.12 The regulations and guidance also cover the ability under the Act to aggregate requests for costing purposes. This is aimed at addressing the potential for requests to be split into smaller elements to avoid reaching the “appropriate limit” and the potential for multiple requests as part of a campaign.

The guidance states: -

“Aggregating requests for costing purposes

In certain situations, the costs of answering more than one request can be added together or aggregated for the purposes of estimating whether the appropriate limit would be exceeded in relation to any one of those requests. This only applies to requests under the Freedom of Information Act, not to subject access requests to public authorities on “unstructured personal data” to which the Data Protection Act applies.

The Regulations state that requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to the same public authority;
- they must be either 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’ (section 12(4)(b) of the FOI Act);
- the requests must relate to the same or similar information; and
- they must have been received by the public authority within a space of 60 consecutive working days.¹”

4. Financial Implications

4.1 The additional costs which will arise for the authority in meeting requests which fall below “the appropriate limit” are proposed to be met from within existing budgets and resources. There is the potential that additional resources will be required should the burden of this impact significantly on staff’s ability to perform their existing duties.

4.2 The Department for Constitutional Affairs has issued specific guidance regarding the applicability of VAT regarding fees for information provided under the Freedom of Information act.

If the authority is the only source of the information concerned then VAT will not be chargeable as the provision of the information is not considered to constitute an ‘economic activity’. If however the information is also available from a source that is not a public authority and the authority were to provide the information, then it would be classed as an ‘economic activity’ and VAT would be chargeable. These rules apply whether or not the cost of provision is above the ‘appropriate limit’. In addition, fees charged for information that is provided in accordance with the authority’s publication scheme will attract VAT.

¹ ‘Working days’ does not include weekends and public and bank holidays, as defined in the Regulations

5. Staffing Implications

The main work of meeting the requirements arising from Freedom of Information Act requests is planned to be met from existing staff resources. Managers will ensure that the impact of this on individuals is monitored and that action is taken if problems arise, but this may have resource implications.

6. Legal Implications

6.1 It is a statutory duty that Brent Council meet the requirements of the Freedom of Information Act. Failure to do so could lead to successful challenges to the Information Commissioner.

6.2 The Act is not prescriptive as to how public authorities should arrange their information or respond to requests. It is, however, necessary that the Council have regard to the Codes of Practice issued by the Lord Chancellor under the Act. The Code of Practice on the discharge of public authorities' functions under the Freedom of Information Act 2000 has been issued under section 45 of the Act and the Code of Practice on the management of records has been issued under section 46 of the Act.

6.3 The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 came into force on January 1st 2005 and prescribe the basis on which charges may be made for the provision of information in response to a request under the Act. The detail of these Regulations and the related guidance is set out in the body of the report.

7. Diversity Implications

7.1 It is not believed that the decisions proposed will affect any sections of the community in a disproportionate manner.

8. Background Information:

The Freedom of Information Act 2000

London Borough of Brent – Publication Scheme – Effective 1 March 2003

Information Sharing – report to CMT February 2004

DCA Model Action Plan for preparation for the Implementation of the Freedom of Information Act 2000. Published in December 2003.

Freedom of Information Act – Report to Corporate Management Team 18th November 2004.

Freedom of Information Act – Report to Executive 13th December 2004.

Guidance on the application of Freedom of Information and Data Protection (appropriate limit and fees) Regulations 2004 – Department of Constitution Affairs 17 December 2004 Statutory Instrument 2004 No 3244 – The Freedom of Information and Data Protection (Appropriate limit fees) Regulations 2004.

DCA Freedom of Information guidance on fees and limits

These documents are available via the Brent website at www.brent.gov.uk/Fol

Any person wishing to inspect the above papers can also contact Bernard Diamant, Director of Corporate Services, Brent Town Hall, Wembley, Middx HA9 9HD, Tel. 020 8937 1400.

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