

LONDON BOROUGH OF BRENT

MEETING OF THE EXECUTIVE 13 December 2004

Report from the Director of Corporate Services

For action

Wards Affected:
All

Report Title: FREEDOM OF INFORMATION ACT

Forward Plan Ref: Cor-04/05-67

1. Summary

- 1.1. The Freedom of Information Act 2000 comes 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 days.
- 1.2. This Report describes the preparation work the Council has already completed and that which is still planned to ensure that the Council fulfils its statutory obligations.

2. Recommendations

That the Executive:

- 2.2. Notes the progress the Council has made towards meeting its statutory obligations and good practice under the Freedom of Information Act.
- 2.3. Approves the FoI policy given in Appendix A.
- 2.4. Notes that Service Areas will be adopting and implementing document retention policies early in 2005 where these are not already in place
- 2.5. Agrees that charges should be levied for dealing with FoI requests as set out in paragraph 9.

- 2.6. Endorses the organisational structure and procedures proposed to satisfy Fol requests set out in paragraphs 7.3 and 8.
- 2.7. Agrees that the necessary funding should be made available as outlined in the Financial Implications below.

DETAIL

3. Summary

- 3.1. This report contains the following:
 - Section 4 gives a summary of the key conclusions and recommendations.
 - Section 5 gives brief details of the Freedom of Information Act
 - Section 6 contains a description of the Council's level of preparedness and the work that has already been completed.
 - Section 7 details the work that remains to be completed to meet the 2005 deadline.
 - Section 8 sets out the roles and responsibilities for Brent staff dealing with Fol requests.
 - Section 9 details the current position regarding fees that the Council may charge for Fol requests.
 - Sections 10 to 14 gives the details of the staff, legal, software and financial resources needed to comply with the Fol Act.
 - Appendix A sets out the Fol policy proposed for Brent.
 - Appendix B is a summary of the model action plan¹ for the implementation of the Freedom of Information Act, together with details of the progress the Council has made.
 - Appendices C and D are intended to give Service Area management an indication of the records management work that each Service Area may need to undertake and of the exemptions from the Fol Act.
 - Appendix E is a summary of the Environmental Information Regulations 2004(EIRs). These regulations are closely associated with the Fol Act.

4. Key Conclusions and Detailed Recommendations

4.1. The current position:

- 4.1.1. The deadline for the full implementation of the Freedom of Information Act is 1st January 2005.
- 4.1.2. ITU is implementing the organisational and technical infrastructure to support the Fol Act. In particular:

¹ Model Action Plan for preparation for the Implementation of the Freedom of Information Act 2000. Published in December 2003.

- A computer based training package is available for all staff to use so that they can become familiar with the Fol Act. In addition other briefing and training initiatives are being undertaken.
- An internal website providing staff with information and advice relating to the Fol Act has been launched.
- A new post of Corporate Information Manager has recently been created in the IT Standards team. Recruitment has been successful and the new manager started on 12th October. She will have direct responsibility for:
 - Coordinating the work needed to ensure that the Council is ready for the full implementation of the Fol Act in January 2005.
 - Advising Service Areas where there are specific exemptions from the Act or where the case for disclosure is unclear.
- ITU has investigated the acquisition of software to monitor Fol requests to ensure that the Council meets its statutory obligations under the Act.

4.2. Further Actions required:

4.2.1. ITU will be commencing a records management review and strategy study in 2004/5. The implementation of recommendations resulting from this is likely to require significant resources and effort from Service Areas during 2005/6. An indication of the scope involved is given in Appendix C.

4.2.2. Each Service Area will need to:

- Ensure that it holds and implements a document and data retention policy that meets its statutory and business needs.
- Adopt the Fol policy which is attached in Appendix A. In particular, taking responsibility for dealing with all Fol requests relating to the information they hold and a system for clearing any refusals.
- In accordance with the Fol policy:
 - Ensure that a member of its staff is given the role of Service Area Fol Representative.
 - Designate other officers as Fol Action Officers. These officers will be responsible for processing requests for information.
- Ensure that its staff are aware of the Fol Act and the exemptions that apply (a summary of these is given in Appendix D).
- Ensure that contractors with whom it deals are aware that information they provide to the Council will be subject to the Fol Act.
- Ensure that contractors who manage information on the Council's behalf (for example Capita for Revenue & Benefits) are aware that they may have to provide information to the Council to satisfy Fol requests that the Council may receive.
- Make financial provision for advice from Legal Services where the legal basis for providing information or claiming exemption is not clear-cut.

4.2.3. The charges to be levied for dealing with information requests need to be determined once the Regulations governing this are available. In officers view the Council should charge the maximum fees allowable for requests for information under the Fol Act for the reasons set out in paragraph 9.

5. Freedom of Information Act

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

5.1. 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.

5.2 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

5.3. There is concern that many professional bodies will use the Freedom of Information Act to request information and that, early in 2005 at least, Local Authorities will receive a large number of requests. Additional staff may be needed to process these.

5.4 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. Although the Council is not obliged to follow this action plan it is a useful measure of the progress of the Council so far.

6. The Current Position within Brent

6.1. The Current level of preparedness within Brent

6.1.1. The Council has met the first requirement of the Freedom of Information Act by issuing and maintaining its Publication Scheme.

- 6.1.2. The Council has made reasonable progress in preparing itself for the coming into effect of the general right of access to information measured against the target dates in the recommended DCA model plan in Appendix B and compared with other Authorities, it is in an average position.
- 6.1.3. While there is still some work to be done it is confidently expected that the Council will be able to meet the minimum requirements of the Act, i.e. respond to requests for information under the Act within the statutory timescales, from January 2005.

Some key achievements are set out in Appendix B and include

- The appointment of an Information Champion and a project team.
- The development of a project plan.
- The appointment of a Corporate Information Manager.
- The procurement of a computer based training package (CETIS) that will be accessible on-line by all staff.
- The development of staff guidance leaflets in association with London Connects and other London Boroughs.

7. Work Remaining to be Completed in Brent

7.1. Work in progress

7.1.1. The current focus of work is raising awareness and setting-up the infrastructure in order to meet the requirements of the Act. Activities in progress include:

- Briefing sessions for managers.
- The development of a system to track and monitor Fol requests to help ensure that the Council meets its statutory obligations. This system has been procured and will be developed by the end of December.
- Raising public awareness. This is being undertaken nationally by the Information Commissioner. However, there may be a need for some supplementary publicity within the borough. This will be reviewed in 2005.
- Ensuring that records management across the Council is efficient, effective and secure.
- Developing and implementing specific procedures for dealing with Fol requests.

7.2. Records management.

7.2.1. Much of the information requested under the Fol Act will be held on paper files rather than on a computer.

7.2.2. A key expectation reflected in the Lord Chancellor's Department of Constitutional Affairs' Code of Practice is that records should be properly managed. In order to achieve this, they recommend that Local Authorities

follow the National Archives' Model Action Plan². It is intended that during 2005 the Council continues to develop its records management arrangements having regard to the Code. However, it is anticipated that Service Areas should be able to deal with most FoI requests they receive promptly as they should be managing records satisfactorily as part of their normal day-to-day business.

7.2.3. In addition to the above, adopting ISO 15489 methodology for Electronic Document Records Management and identifying where records management policies, procedures and systems need improvement is one of ODPM's e-Government Priority Outcomes and consequently will be a factor contributing towards "Excellent" CPA status and this will also be taken into account in reviewing and developing records management arrangements .

7.2.4. Implementing a records management policy that takes proper account of the Lord Chancellor's code of practice is a major undertaking for the whole Council with major cost and resource implications, which have not been estimated as yet. In the absence of this the Council is likely to be robustly criticised in the context of any complaints to the Information Commissioner. The recommended plan to address this risk is to:

- Undertake a records management review and strategy study in 2005 in order to develop a council wide approach to records management.
- Undertake substantive work during 2005/6 dependent on resource availability. The work would be led by the Corporate Information Manager and is likely to involve the implementation of a corporate information asset database.

7.2.5. Meanwhile, as a matter of urgency and in order to ensure that it can handle FoI requests as efficiently as possible, every Service Area needs to:

- Confirm that its records are indeed being managed satisfactorily and that its staff are able to retrieve this information relatively easily.
- Develop, agree and implement a records retention policy if this is not yet in place. Any records not required should be destroyed in line with the agreed policy in order to reduce wasted effort when searching for information. The need for retention policies is being stressed in the FoI briefings given to managers.

7.3. Processes Proposed

7.3.1. Detailed procedures need to be agreed and documented in time for the January 2005 deadline and the proposed procedures are summarised below.

7.3.2. As this entire arrangement is new, these processes may need to be amended by officers in the light of experience particularly in the first months of operation.

² Model Action Plan for Developing Records Management Compliant with the Lord Chancellor's Code of Practice under Section 46 of the Freedom of Information Act 2000 – Model Action Plan for Local Government – August 2002.

7.3.3. In overall terms, dealing with enquiries under the FoI Act should be carried out by the Service Area responsible for holding the information being enquired upon. Consequently, there is a need for each Service Area to have a named FoI Coordinator with responsibility for progressing FoI requests and ensuring that they are answered within the time allowed – this is 20 working days in most cases.

7.3.4. The proposed outline approach to deal with FoI enquiries would be:

- All FoI requests should be entered onto the FoI tracking system (see below) so that the Council can ensure that requests are being handled within the timescales stipulated in the Act. Any request which is capable of being fully responded to within 2 days will not need to be tracked.
- The person with direct contact with the customer provides the information if possible. The first port of call for locating this would be the Council's Internet or Intranet site, followed by relevant information that the contact has access to. Typically this would be Service Area files held on computers or in paper format.
- If a request cannot be processed directly, it is to be processed by the Service Area's FoI Action Officer.
- If necessary the request will be referred up to the Service Area's FoI Coordinator.
- In situations where information is difficult to obtain, where exemptions are not clear-cut or where the legal basis for providing information is unclear, the Service Area's FoI Coordinator may need to seek advice from the Corporate Information Manager or Legal Services.
- In exceptional cases, or where the request spans multiple Service Areas, the Corporate Information Manager would provide advice and/or coordinate the collection of information and the provision of responses.
- The Corporate Information Manager would also be responsible for coordinating the analysis of exemptions.
- Any exemptions under section 36 of the Act will require the involvement of Legal Services and will need to be authorised by a "qualified person" under the Act (see below).

7.3.5. In addition to the above:

- The Council needs to develop an internal review process. This is currently being finalised and will be in place by the end of January 2005 in time for the first appeals that are likely from members of the public who have requested information. It may be possible to update members concerning this at the meeting which considers this report.
- Service Areas need to ensure that staff respond positively to requests for information and adopt an open attitude to sharing information, while being fully aware of likely exemptions.
- Service Areas need to ensure third parties (e.g. contractors) are aware that information they provide to the Council, and maintain for the Council, will be subject to the FoI Act even though they are not subject to the FoI Act themselves.

- Service Areas need to consult with the appropriate organisation if the requested information not owned by the Council for example confidential information provided by or shared with the Police, NHS and other bodies.

8. Roles and Responsibilities

8.1. The roles and responsibilities that need to be covered to meet Fol requests are covered in the policy in Appendix A and are:

8.1.1. The Director of Corporate Services to be Information Champion.

8.1.2. Service Directors or their nominee to sign off any refusal of requests under the Fol.

8.1.3. ITU Corporate Information Manager:

- Coordinate complex Fol requests (eg those spanning more than several Service Areas).
- Advise on exemptions.
- Monitor requests on the Fol tracking system.

8.1.4. Legal Services:

- The Borough Solicitor is likely to be the qualified person to assess Section 36 exemptions. Section 36 exemptions apply where disclosure would be likely to inhibit the free and frank provision of advice or exchange of views or would otherwise prejudice the effective conduct of public affairs. Further guidance is awaited from the DCA.
- Provide legal advice (on exemptions for example).

8.1.5. Service Area Fol Representatives:

- Represent the Service Area on Freedom of Information matters.

8.1.6. Service Area Fol Action Officers:

- Answer Fol requests.
- Update Fol requests in the tracking system.
- Make decisions on whether information should be disclosed (referring to the ITU Corporate Information Manager or Legal Services in cases of doubt).

8.1.7. All staff:

- Identify and log Fol requests in the tracking system referring them to Action Officers as appropriate.
- Be aware of the Fol Publication Scheme and draw attention to it where appropriate.
- Provide information to enable Fol Action Officers or the Corporate Information Manager to respond to Fol requests.

8.2. It is intended that as well as the Service Area Fol Representatives meeting regularly as the Implementation group a senior group of officers from ITU, Legal and Policy and Regeneration should be established to oversee the

initial effectiveness and development of the Council's processes for complying with its obligations under the Act.

9. Fees

- 9.1. 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.
- 9.2. Further details, including the position regarding information that costs over £450 to produce, are awaited.
- 9.3. 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.
- 9.4. It is also proposed to charge photocopying and postage costs in all cases.
- 9.5. 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.

10. Short-term administrative support

In order to cater for the expected initial heavy workload expected, Members are asked to sanction the release of £24,000 from balances should this prove necessary. This would include the costs of temporary staff (reporting to the Corporate Information Manager) who would be available to give help to others to meet the anticipated peak demand for FoI requests in early 2005.

11. Software Requirements

Much of the software needed to help the Council meet the demands of the FoI is required for best practice in the management of information and websites generally and has already been implemented in the Council. Software to track FoI requests is currently being developed. Further software may be needed for management of electronic and paper documents and to enable the intelligent extraction from a wide range of electronic documents. Information requests from the public may be put in terms that are quite general and need information from a range of documents. Software is available that could help extract this information. The Council does not currently have software of this type. It is not an urgent requirement and should be considered when the new IT strategy is developed.

12. Financial Implications

12.1. Funding needs for 2004/5

12.1.1. The funding required for the period October 2004 to March 2005 is estimated to be:

Item	Amount
The Corporate Information Manager post from October 2004.	£25,000
Leaflets for staff and other expenses in raising awareness.	£4,000
On-line and other training materials.	£3,000
The Fol requests tracking system.	£8,000
Temporary administrative support to handle the short-term peak in requests expected in the first three months of 2005.	£15,000
Legal advice (provisional).	£5,000
Total for 2004/5	£60,000

Of this, £25,000 for the Corporate Information Manager post can be met from the existing IT Unit budget and some costs may be deferred until 2005/6.

12.2. Funding needs for 2005/6

12.2.1. There are two principal activities for 2005/6

- Responding to Fol requests. This is expected to be funded through Service Area budgets, with some additional help from the Corporate Information Manager.
- Implementing the Records Management policy mentioned above. This will be the subject of a separate bid once the feasibility study has been completed early in 2005. The costs are likely to be significant and will include those for necessary software and an information audit.

12.2.2. In addition, there will be ongoing costs for:

- The Corporate Information Manager post.
- Continuing awareness, training and publicity costs.
- Software maintenance.
- Service Area staff time dealing with Fol requests.
- Legal advice.

12.3 There is no specific budgetary provision for these sums, although for 2004/5 the costs of the Corporate Information Manager could be met from within the budgets of the Information Technology Unit. This is not true of future years so a growth proposal has been made as part of the current budget cycle for an increase of £95K per annum. This will cover

the full year costs of the Corporate Information Manager (£45K) and £50K of associated operational costs. It was not possible before now to define the associated operational costs as statutory Government guidance has been delayed and is still not complete.

- 12.4 It is proposed that of the initial expenditure outlined in paragraph 12.1.1 above, the costs of the computerised training system and tracking system will be met from a 'self-funded' capital bid, with the repayments and ongoing costs of maintenance, support and administration being met from the £50K of growth proposed for future years. However, expenditure on staff and public awareness raising, legal fees and possible administrative support cannot be met from capital. The extent of the requirement is difficult to estimate as the take up of rights by individuals and organisations is simply not known.
- 12.5. Every effort will be made to contain expenditure within 2004/5 budget by minimising spend and delaying it until 2005/6 (when it is anticipated that there will be budget provision), subject to satisfying statutory requirements. However, it is reasonable to suppose that there will be a peak in demand in the 3 months following 1 January 2005. In addition this is the time when officers will be faced, for the first time, with difficult issues concerning, for example, the proper application of exemptions. We have already received indications that both aggrieved individuals and commercial organisations have been waiting for 1st January to release what may be very wide ranging requests. Members are therefore asked to sanction the release of a sum of up to £24K from balances, should this be necessary.
- 12.6. Statutory guidance from the Department of Constitutional Affairs has been issued and legal advice indicates that it will be necessary to consider the implementation in line with the guidance of a records management system in 2005/6. The costs of purchase, implementation, support and maintenance of that system are proposed to be met from the balance of the proposed 2005/6 growth remaining after expenses identified above.
- 12.7. It is proposed that the processing costs for requests, which include service area costs, are to be met by the service areas.
- 12.8. It is proposed that some of the processing costs are recovered through the charging of fees up to the maximum allowed as described under section 9.

13. Staffing Implications

- 13.1. In April this year, CMT agreed a report on information sharing and the Freedom of Information Act and the recommendation that the corporate strategic lead and co-ordination in relation to the Fol Act should be undertaken in the IT Unit Standards Team.
- 13.2. The post of Corporate Information Manager in the IT Unit was agreed by CMT and, because of the urgency resulting from the January 2005 deadline, recruitment was undertaken. This was successful and the new manager started on 12 October.

- 13.3. In addition to the above, each Service Area needs to give a member of its staff responsibility for coordinating and logging Fol requests. This work is expected to be containable within current staffing levels.
- 13.4. Additional resources may be required to process the large number of requests anticipated in early 2005.

14. Legal Implications

14.1 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.

14.2 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.

14.3 Schedule 12A of the Local Government Act, which sets out the categories of the information which are the exempt from the main requirements of the access to information legislation affecting meetings of the Council, the Executive and committees and reports to them, is currently being reviewed by the Government. Regulations making amendments to the schedule designed to make the categories of exempt information consistent with the Freedom of information Act are anticipated shortly and are expected to come into effect on 1st January 2005. It is anticipated that the Constitution will be revised in January to reflect the changes.

14.4 The Executive has power under the Scheme of Transfers and Virements in part 6 of the Constitution, on the recommendation of the Director of Finance, to approve transfers from reserves (balances) to the general fund for the purposes of the efficient management of the Council's affairs, for example to cover anticipated overspends on particular Unit budgets.

15. Diversity Implications

15.1. The Information Commissioner is responsible for making sure that all sections of the public are aware of their rights under the Fol Act and are able to take advantage of its provisions.

15.2. We will review relevant output from the Information Commissioner as soon as it is available and will enhance it for Brent's residents and staff, should it prove necessary.

16. 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.

Model Action Plan for Developing Records Management Compliant with the Lord Chancellor's Code of Practice under Section 46 of the Freedom of Information Act 2000 – Model Action Plan for Local Government – August 2002.

DCA Freedom of Information guidance on fees and limits

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

Any person wishing to inspect the above papers can also contact

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FREEDOM OF INFORMATION POLICY.

1 Introduction

- 1.1 This policy defines the responsibilities for meeting the Council's obligations under the Freedom of Information (Fol) Act 2000.
- 1.2 The Act was passed by Parliament on 30 November 2000. From the 1st January 2005 The public has a statutory right of access to 'recorded' information held by public authorities in any form Brent Council, along with every other public body, will be obliged to provide to the public on request a substantial part of information that we hold.
- 1.3 Anyone can request information. They need not say why they want it, and the Council has 20 working days in which to make a full response. There are a range of limited exemptions such as for personal data or material which is held in confidence. These are narrowly defined and the presumption will be in favour of openness.
- 1.4 The Council has developed a Publication Scheme, which has been approved by the Information Commissioner. This is a statutory obligation under the Act. The intention is that this will be of use to the public in locating and accessing information, and in the council in helping us to deal with enquiries. Where information is covered by the Publication Scheme the Council is not required to deal with individual requests for that information.
- 1.5 The Council will demonstrate its commitment to freedom of information by developing a range of procedures and guidelines which will promote best information management practice. In addition to this policy, the key council documents will be:
 - information request procedures;
 - record retention schedules;
 - records management guidelines;
 - the publication scheme;
 - training material for Freedom of Information awareness.

2 Scope

- 2.1 This policy applies to all departments and officers of Brent Council.

3 Responsibilities

3.1 General:

Overall responsibility for Freedom of Information matters will rest within Corporate Services, and in particular, with the Corporate Information Manager. This officer will offer advice to departments on Freedom of Information matters. Legal Services will offer legal advice associated with the Freedom of Information.

3.2 Section 36 Exemption Qualified Officer:

Any disclosure decision under section 36 of the Act (prejudice to effective conduct of public affairs) must be based on the opinion of a "qualified officer" officer under the Act.

3.3 Service Directors:

Any refusal for a request for information under the Act will be signed-off by the appropriate Service Area Director or their nominee.

3.4 Freedom of Information Implementation Group:

This group will be established by the council and convened by the Corporate Information Manager. The members of the group will each have the responsibility for:

- dealing with enquires which relate to their department
- disseminating training and good information practice throughout their service area
- updating and maintaining service area input into the publication scheme
- providing input to the formation of corporate records management.

The group will meet bi-monthly, and report to the Corporate Management Team.

3.5 Service Area FoI Representative:

Each service directorate will nominate a person to represent the service on freedom of information matters. The nominated officer will be a member of the Freedom of Information Implementation Group and will receive a higher level of training than other staff.

3.6 FoI Action Officers:

Each service area will nominate freedom of information action officers, who will be responsible for processing a request for information. The officers will receive a higher level of training than other staff members.

If requests for information fall across departments, a lead Action Officer will be assigned and will have overall responsibility for completing a request for information.

- 3.7 All staff:
council staff will be responsible for:
- ensuring that requests for information that fall under the Freedom of Information Act are identified
 - awareness of the Freedom of Information Act 2000
 - awareness of the council's publication scheme
 - ensuring that procedures for processing requests for information are followed
 - ensuring that they comply with any request for information from the Corporate Information Manager or FoI Action Officer within their area.

- 3.8 Enquiries:
Each department will be responsible for dealing with enquires which relate wholly or substantially to information which they hold.

There may be cross-departmental enquiries, and these will be co-ordinated by the Corporate Information Manager and the appropriate Action Officer.

The Corporate Information manager will be responsible for developing and maintaining detailed procedures on how enquires are to be handled. These will cover:

- identifying an enquiry
- using the publication scheme
- identifying information
- considering exemptions
- offering help and assistance
- calculating any fees

- 3.9 Exemptions:
The Corporate Information Manager will provide advice and assist in considering the applicability of exemptions under the Freedom of Information Act 2000.

Legal Services will provide legal guidance on exemptions.

Decisions on whether to disclose or not will reside within the service directorates.

Any decision under section 36 exemption will be undertaken by the monitoring officer.

- 3.10 Records Management:
Each service area, through their representatives on the Freedom of Information Implementation Group, will be individually responsible for:
- the development of retention schedules
 - the implementation of good records management practice within their area in accordance with the Code of Practice published under the Freedom of Information Act 2000, and
 - the implementation of a corporate records management process.

3.11 Publication Scheme:

The council's Publication Scheme was originally approved by the Information Commissioner in 2003.

There will be a continuing need to maintain and review the scheme, and this will be done by the Freedom of Information Implementation Group.

3.12 Training, guidance and advice:

The Corporate Information Manager will develop an expertise on all Freedom of Information matters, and will develop and deliver:

- briefings for management
- a seminar and leaflets for staff and the public
- a detailed web and intranet presence
- awareness training
- training for Action Officers

3.13 Appeals:

Any applicant dissatisfied with the response to their enquiry will be able to seek a review of the decision. If they are still not satisfied, they have a right of appeal to the Information Commissioner.

4 Review

This policy will be reviewed six months after adoption.

IT Standards Manager
October 2004

MODEL TIMETABLE FOR THE IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT 2000.

DCA Model Action Plan		Brent Position as at 3rd October 2004
Action	Target Completion	
1. Appoint an information champion	December 2003	Complete. The Director of Corporate Services has undertaken this role since the end of 2003.
2. Appoint a project team	December 2003	Complete. The project team consists of Raj Seedher, Dane Wright and the new Corporate Information Manager.
3. Assess your overall preparedness	December 2003	Complete. Currently building awareness.
4. Draw up a tailored project plan for your organisation	By the beginning of spring 2004	Complete. See tasks list on Fol resource page on the Intranet.
5. Review records and follow the National Archives' records management MAP	By the beginning of spring 2004	Planned. The project team will be facilitating this in 2005/6. It is a major strategic task for the whole organisation.
6. Appoint/train someone as records manager	By the end of spring 2004	Complete. Information manager in post in October 2004.
7. Review document format to facilitate release under the Act	By the end of spring 2004	Planned. Part of the records management study (see 5 above).
8. Plan and develop institution specific guidance	By the beginning of summer 2004	In progress. London Connects is producing a guidance leaflet for London Boroughs. Procedures are being posted on the Council's Intranet.

9. Develop an internal communications strategy	By the beginning of summer 2004	In progress. Briefing sessions held for managers. Leaflets (see 8 above) will be distributed to staff. Information source on the Council's Intranet.
10. Analyse and develop the publication scheme	By the beginning of summer 2004	Complete. Updates will be undertaken by the Corporate Information Manager as required.
11. Analyse training needs and draw up and implement a training plan	By mid-summer 2004	In progress. Web based training package selected. This is CTIS and is being used by other LAs. A list of nominated staff is being compiled. The new Corporate Information Manager will be arranging detailed briefings for managers – it will then be up to them to ensure that their nominated staff undertake the training.
12. Develop networks nationally and locally	By mid-summer 2004	In progress. Brent initiated a Round Table for FoI for the London Boroughs.
13. Design external communications strategy	By mid-summer 2004	Planned. Most of this will be done by the Information Commissioner, but Brent may need to add information to its website.
14. Contact third parties	By the end of summer 2004	Not started. Service Areas need to contact their contractors to let them know that information they provide to the Council will fall under the FoI Act.
15. Develop monitoring procedures and examine systems	By the end of summer 2004	In progress. Initial evaluation complete.

16. Implement external communications strategy	By the end of summer 2004	Planned. Follows on from 13 above.
17. Review progress on training	By Autumn 2004	Planned. The training package will be rolled-out in the Autumn – it will provide reports on course performance and uptake.
18. Review and evaluate	By Autumn 2004	Planned. Will be undertaken by the new Corporate Information Manager.

RECORDS MANAGEMENT TOOLKIT

This Appendix is intended to give Service Areas an indication of the work that will be involved in developing and implementing a records management policy.

Complying with Freedom of Information will be impossible if we don't know what information we have got, where it is, who is responsible for it, or how long we keep it. To be able to deliver on Freedom of Information, we need to improve our systems of records management. This short summary helps identify the key areas which individual managers and offices throughout the Council should be addressing

Audit information assets and practice

Each Department and Section needs accurate knowledge of all the information it creates and keeps to ensure that all information is accurate, appropriate and accessible and to avoid duplication or contradictory versions of records. Managers should audit information assets: databases, filing systems, servers, PC drives, physical storage areas, 'personal' filing cabinets, reference sources, etc. Knowing what you've got you will be better able to manage it – and to deal with any enquiries which come along.

Assign records responsibilities and allocate proper resources to records work

Make sure that each records series has a clear data custodian, and that everyone working with it is aware of what their responsibilities are. Assign proper time for jobs like filing or weeding of records: otherwise they tend to get lost in our already busy schedule. In the long run, this simply undermines the work that the Council does by making us less efficient, and makes the prompt and effective response to a Freedom of Information enquiry almost impossible.

Use shared central filing systems - paper and electronic

The use of shared central filing systems for paper files and a structured network for digital records would ensure that records are accessible to all appropriate users but also secure. Private hoards of information - in filing cabinets or PCs - create difficulties for locating all the information relevant to an enquiry and for ensuring that the accurate current version of data is used and that there is appropriate disposal of all time-expired records. Advice and practical guidance on this matter will be available from the Corporate Information Manager.

Use Records Retention Schedules

Some sections within the Council already have agreed records retention schedules which identify all the types of records created, and how long they should be retained to meet legal and operational requirements. Applying the schedules ensures that statutory requirements are met, space and time is not wasted on life-expired records and that there is a transparent policy for how long records are kept. Advice and support will be available from the Corporate Information Manager. Help in developing or implementing retention schedules is available from the Corporate Information Manager.

Use proper metadata

To be able to manage information, we need to properly describe it. We do this through the use of metadata - information about information. This applies to paper files: ensuring that proper naming conventions are used, or making sure that file numbers reflect the structure of the records, or making sure that every file printed shows the date of print and the path and name of its electronic original. With electronic records, standardised use of good metadata is even more important. In any document management systems used, this should be applied automatically and users prompted for it, but even in a simple Word document we can use the "description" field in the "Save" dialogue box or "document properties" to add details about content, context, author, keywords, retention and security.

Store records properly

Many of the Council's records are in conventional, that is paper, format, and this will continue to be the case for the foreseeable future. We need to ensure that these records are properly stored. In particular, they need to be secure and dry. Ideally, records should be stored in an environmentally controlled area not used for any other purpose, and systems of file tracking should be in place.

EXEMPTIONS FROM THE FOI ACT

The following is intended to give an indication of the areas where exemptions apply.

There are a number of exemptions to the right of access. Some are 'absolute' exemptions, such as:

- information otherwise accessible;
- statutory prohibitions on disclosure;
- breaches of confidence;
- court records; and
- personal information.

The Act sets out a number of other exemptions relating to matters such as national security and defence, police investigations, and the formulation or development of government policy.

Before an exemption is used to withhold information, however, the Council will usually be obliged to consider two further points. Firstly, some of the exemptions can only be cited if the release of information would prejudice substantially the purpose to which the exemption relates. For instance, information held in connection with law enforcement can only be withheld if its release would show "substantial prejudice" to the prevention or the detection of a crime. This "harm test" is intended to make clear that information should be disclosed unless the prejudice caused would be real, actual and of significance.

Secondly, some exemptions require the public authority to apply a "public interest" test before making a final decision as to whether or not to release the information. This public interest test involves considering the circumstances of each particular case and the exemption that covers the information. The balance will always lie in favour of disclosure: information should only be withheld if the public interest in withholding it is greater than the public interest in releasing it.

Most of the exemptions will require a public authority to apply both the harm test and the public interest test.

Only the information to which an exemption applies can be withheld. If a particular document has been requested which contains some exempt information, only the specific items of exempt information can be withheld. The remainder of the document would still have to be released.

Even where an exemption in the Act applies, the Act does not require the authority to withhold it.

Environmental Information Regulations 2004

Section 39 of the FOI Act has an exemption for requests that fall within the meaning of environmental information under the Environmental Information Regulations 2004 (EIRs). Requests for this kind of information, dealt with under a regime separate from FOI, will come into force from 1 January 2005 provided the EIRs are made by Parliament. The EIRs give effect, in national law, to the provisions of European Directive 2003/4/EEC on public access to environmental information.

The question of whether information is or is not environmental information is a matter of fact. This means that once it has been established as a matter of fact that the request relates to environmental information the request must be considered in accordance with the requirements and procedures of the EIRs. It is not open to public authorities to choose which regime to apply.

Under the EIRs (r 5), a public authority that holds environmental information shall make it available on request, unless that information includes personal data of the person making the request.

There are other exceptions to this duty, including a public interest test. It is important to note that FOI exemptions cannot be used if the request concerns environmental information as defined the EIRs.

Unlike FOI requests, environmental information requests under the EIRs do not have to be in a specified format. It might therefore be argued that such a request need not be in writing, however a request can be refused on the basis that it is manifestly unreasonable. Under the EIRs the information must be held by the authority. Therefore, it should not include records that do not already exist or that would have to be created by manipulating existing information, but could potentially include information held on behalf of others.

Environmental information is defined to mean any information in written, visual, aural, electronic or other material form on:

- a. the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements,
- b. factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a),
- c. measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements,
- d. reports on the implementation of environmental legislation,

- e. cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c), and
- f. the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)."

This definition does not require that the information in question be entirely or substantially environmental. What constitutes environmental information may therefore be interpreted very broadly.