

Whitchurch-on-Thames Parish Council Information Policy

Whitchurch-on-Thames Parish Council is subject to the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. It complies with the requirements of this legislation.

Many requests for information can be dealt with in the ordinary course of business and do not need to be processed under the above legislation. If the information can be provided immediately, or can be made available routinely, then the Council will do this. Please check the website or noticeboard first to see if the information is available before making any request. It is also worth looking at the Information Commissioner's website at www.ico.org.uk, which includes guidance for the public on making requests.

The contact details for making a request are: The Parish Clerk, Whitchurch-on-Thames Parish Council, 23 Swanston Field, Whitchurch-on-Thames, Oxon., RG8 7HP, or parishclerk.whitchurchonthames@gmail.com.

Data Protection Act 1998

The Council will acknowledge receipt of a request for personal information as soon as possible. As long as the information is not subject to exemptions, or contains personal data relating to third parties, the Council will provide a written response within 40 calendar days of receipt of payment (£10 fee). Payment can be made by cheque payable to "Whitchurch-on-Thames Parish Council" and sent to the address shown above.

Under the terms of the Data Protection Act, the Council will provide you with a statement, or copies of data, as long as:

- it is "personal data" as defined by *Durant v Financial Services Authority* (2003); that is, truly personal, not merely incidental, mention of a person, and within a structured, relevant filing system
- it is not exempt from disclosure
- you have paid the required fee
- the Council has been able to verify your identity, and
- you have not repeatedly requested the information in a short space of time.

Freedom of Information Act 2000 ("FOI")

Timescales and ways of making requests

The Council will respond to an FOI request in 20 working days, counting the first working day after the request is received as the first working day. An FOI request can be made by anyone, from anywhere, for any purpose. It must be in writing and there must be a return address to send the information to. The Council will confirm or deny whether it holds the information within the 20 days. If it does not hold the information it will explain why not. The Council will let you know if it needs longer than 20 days to apply the public interest test and will tell you at that point what exemptions it is looking at and how long it may need. If the Council does need more

time to apply the public interest test this will be up to a maximum of a further 20 working days, bringing the total time to a maximum of 40 working days.

Refusal

The Council may refuse a request if it considers that:

- it is vexatious (designed to cause disruption or annoyance rather than having a serious purpose)
- to comply would exceed the statutory cost limit (£450, with staff time charged at £25 an hour, which is the statutory rate). If the Council believes it will exceed the cost limit it will issue a refusal notice and invite the applicant, if possible, to revise the request to make it less expensive.
- it falls within an exemption under the legislation (see below).

Charging

The Council can charge for photocopying and disbursements and can request these fees in advance by issuing a fees notice within twenty working days of receipt of the request. When the fees notice is issued the time limit for responding stops. If the Council does not receive the fee within three months it is not obliged to comply with the request.

Clarification

The Council can seek clarification about what is being requested. The time limit for responding stops whilst it waits for a response to its request for clarification.

Exemptions

The most common exemptions are:

Section 21 – information reasonably accessible to the applicant by other means. There is a duty to confirm or deny whether the Council holds it and to tell the requestor where they can find it. This is an absolute exemption which means the public interest test does not need to be applied.

Section 22 – information intended for future publication. This means it is in draft or still being worked on but, when completed or approved, it will be published. The public interest test must be applied here.

Section 31 – prejudicial to law enforcement (preventing crime, collecting tax)

Section 36 – prejudicial to the effective conduct of public affairs

Section 40 – personal data

Section 42 – legal professional privilege

Section 43 - commercial sensitivity.

All except section 21 are qualified exemptions requiring the application of the **public interest test**. This means weighing up whether the public interest is best served by disclosing the information, or not disclosing it.

Environmental Information Regulations 2004 (“EIR”)

Environmental information broadly relates to:

- air, atmosphere, water, soil, land, landscape, plants, animals, biological diversity and genetically modified organisms
- emissions, discharges, noise, energy, radiation, waste, recycling and pollution
- measures and activities such as policies, plans and agreements
- reports, cost benefit analysis and economic analysis
- the state of human health and safety, contamination of the food chain
- cultural sites and built structures (the effect of the environment on the human world)
- planning and development, building control, construction and renovation, floods and flooding issues, land use, traffic, parking, location of mobile phone masts and demolition of buildings.

It covers documents, photos or maps. There is no distinction between formal approved documents and anything else. The duty is to make the information **available**. This is not the same as the duty to disclose under FOI.

There are 20 working days to respond to the request. Unlike FOI there is no extension to the time limit for consideration of the public interest test. A further 20 days is, however, permitted if the request is complex, or there is a large amount of information involved. There is no right to charge for inspection. Cost recovery is permitted with reasonable charges published in advance.

Exceptions

There are exceptions to the requirement to disclose which are subject to the public interest test like FOI. These are:

- personal data
- information not held when the request was made
- the request is manifestly unreasonable (similar to “vexatious” under FOI but with “manifestly unreasonable” used instead. The courts have treated both in the same way)
- the request is too general
- information is in draft or is unfinished
- information is an internal communication
- disclosure would adversely affect the course of justice or commercial confidentiality.

There is a lot of guidance, and case law, on the use of both FOI exemptions and EIR exceptions which can be found on the Information Commissioner’s website at www.ico.org.uk.

Publication schemes

This is a scheme available via the website, setting out the classes of information that will be made routinely available and any charges for them. These include minutes of meetings, annual reports and financial information. This information is easily and quickly available.

Vexatious requests

Whilst Whitchurch-on-Thames Parish Council wishes to be open and transparent, and provide as much information as possible about the work it does, there are occasions when it might be necessary to decide that a request is “vexatious” within the meaning of the legislation. There have been a number of legal cases recently which have helped to set out what is meant, legally, by “vexatious” and which have confirmed that parish councils have limited resources and that their obligations under the legislation must be proportionate to those resources.

Public authorities do not have to comply with vexatious requests. There is no requirement to carry out a public interest test or to confirm or deny whether the requested information is held.

The key question is whether the request is likely to cause **a disproportionate or unjustified level of disruption, irritation or distress**. There is no exhaustive list of circumstances. Every case is unique and judged within the context and history of that specific situation.

“Vexatious” indicators

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent/overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- No obvious intent to obtain information
- Futile requests.

Determination of vexatious request

The Parish Clerk deals with all requests for information on behalf of the Council. If a request is considered to be potentially vexatious the Clerk will prepare a summary, setting out the context and history to the request, which will be reviewed by the Council.

The review

The following will be considered:

- the purpose and value of the request
- whether the purpose and value justifies the impact on the public authority
- the context and history. For example, if there has been a long and frequent series of requests then the most recent request, though not obviously vexatious in itself, will contribute to the aggregated burden
- have there been numerous follow-up enquiries no matter what is supplied? This will be balanced against how clear the Council's responses have been; has contradictory or inconsistent information been supplied or is a legitimate grievance being pursued?
- whether there are alternatives to the vexatious route. If it is too expensive then section 12 (costs in excess of £450) will be used. The Information Commissioner permits the total costs for all requests from one person (or several acting in concert) to be aggregated during a period of sixty days so long as they are requests for similar information
- is this a round robin, a "fishing" expedition or part of an orchestrated campaign? None of these make it vexatious but are factors.

Final warning

If, having considered all of the above, the Council thinks there is a case for treating the request as vexatious then consideration will be given to a "final warning". This is a letter, or email, to the person making the request explaining the impact the request(s) are having and asking that their behaviour be moderated. This "final" warning will not be appropriate in all cases but, if it is possible that the person making the request has not appreciated the impact of what they are doing, then it may assist.

Advice and assistance

The Council may want to ask the person making the request whether advice and assistance would help in clarifying what exactly they wish the Council to provide. Again, this may not be appropriate in every circumstance, but should be considered.

Report to the Parish Council

The history of the matter will go forward as part of a report to the Council, setting out the evidence and reasoning behind the recommendation to propose that the request be treated as vexatious.

The decision to declare a request vexatious will be taken by the Council. This decision should be taken within 20 working days of receipt of the request. In a small parish such as *Whitchurch-on-Thames* it is not possible for there to be an internal review process once the Council has reached its decision that the request is vexatious.

Under section 14(1) of the Freedom of Information Act the refusal notice will set out the Council's internal review procedure (if one is available) and the right of appeal to the Information Commissioner's Office. However, under section 17(6), if the authority has issued a previous refusal notice for a vexatious request (and it would be unreasonable to provide another one) it is not necessary to do so. This will be done

where the complainant has already been warned that further requests on the same, or similar topics, will not receive any response.

Please note that if a request is found to be vexatious, and further requests are received on the same topic, no response will be provided.

Review of policy

This information policy is part of the Council's governance structure and will be reviewed as necessary when legislation (or legal cases) means it needs to be updated.