

MACCLESFIELD TOWN COUNCIL

FREEDOM OF INFORMATION POLICY

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1. Introduction

1.1 The Freedom of Information Act 2000 (FOIA)

<https://www.legislation.gov.uk/ukpga/2000/36/contents> places legislative requirements on all public authorities, including local councils, to provide public access to information held by public authorities. It does this in two ways:

- Public authorities are obliged to publish certain information about their activities through a publication scheme.
- Members of the public are entitled to request information from public authorities to which the council is obliged to respond.

1.2 The Act does not give people access to their own personal data (information about themselves). Individuals wishing to see information about themselves need to make a Subject Access Request under the Data Protection Act 2018.

1.3 The Environmental Information Regulations 2004 (EIR) provides the public the right to request environmental information from public authorities. The regulations cover information on the state of the environment, such as:

- air, water, soil, flora, fauna (including humans), diversity, genetically modified organisms
- information on emissions and discharges, noise, energy, radiation, waste and other similar substances
- measures and activities such as policies, plans, and agreements
- reports, cost benefit and economic analyses
- human health and safety and contamination of the food chain
- cultural sites and built structures (as they may be affected by environmental factors).

1.4 For more information on EIRs, visit <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>

1.5 When responding to requests, there are set procedures the Council needs to follow. These include:

- The time limit public authorities are allowed for responding to requests.
- The fees or amount that public authorities can charge for dealing with requests. Public authorities are not obliged to deal with requests if the costs of finding the information exceed a set amount known as the appropriate limit.
- Public authorities need not comply with vexatious or repeated requests. (See Appendix 1 for some of the indicators that Macclesfield Town Council will use to identify a vexatious request).

1.4 The FOI Act recognises there are valid reasons for withholding information by setting out a number of exemptions from the right to know, some of which are subject to a public interest test.

1.5 Exemptions include information already reasonably accessible, information intended for future publication, research information and if complying with the request would cause prejudice.

1.6 A full list of exemptions can be found in Part II of the FOI Act.

2. Policy Statement

2.1 Macclesfield Town Council aims to move away from the need for individual freedom of information requests and complaints towards a culture of routine, proactive and substantially increased transparency by:

- Being open and transparent and endeavouring to provide the public with access to the official information that it holds.
- Making people aware of their rights to access the official information the council holds.
- Making as much routine information as possible available through the Council's Publication Scheme and website.
- Providing reasonable advice and assistance to applicants for information, including pointing applicants to possible sources of the information they seek if it is not held by the Council.
- Consulting with third parties before disclosing information that could affect their rights and interests. However, we reserve the right to take the final decision on disclosure.
- Ensuring that all staff are aware of their obligations under the Act to make information available.

3. Dealing with Requests for Information

3.1 Members of the public have a general right of access to information held by Macclesfield Town Council, specifically, to be told whether the information is held by the Council, and if it is, to have the information communicated to them.

3.2 Note: There are certain exemptions and limitations to this general right, but just because a document is marked "Confidential" does not automatically mean that it is exempt information, although it may be covered by certain exemptions. Each case will be dealt with on its merits.

3.2 Requests for information must be in writing, must give the applicant's name and return address and must describe the information requested in such a way that we are able to locate it. A written request includes an e-mail.

3.3 FOI requests do not need to be written in a special form, mention the FOI Act or refer to Freedom of Information.

3.3 All requests for information will be logged on a record sheet.

3.4 Receipt will be acknowledged but if it is possible to respond with the information requested, this will be done instead. If further information is required in order to locate the information requested, this will be undertaken as quickly as possible.

3.5 All correspondence, phone calls, e-mails etc., that follow the original request may be recorded.

3.6 The Council has 20 working days in which to deal with a request for information. If it is not clear what information is required, the 20 day period does not begin until clarification is received from the applicant as to exactly what is required.

3.7 The FOI Act allows the local authorities to charge a fee for providing information in response to a request.

3.8 If we can provide the information within 18 hours of staff time there will be no charge. However, charges may be made for costs incurred such as photocopying, printing, postage and packaging, but only if these charges amount to more than £20.00.

3.9 If the cost of finding, sorting and editing the information requested is more than £450 or 18 hours then, under the FOI Act section 12, the Council does not have to provide the information. (Under EIR, environmental information cannot be refused on the grounds of cost).

3.10 As per the FOI Act, the cost will be calculated at £25 per hour per person, regardless of the actual cost or rate of pay. The calculation of the appropriate limit of £450 is equivalent to about 2.5 days of one person's time charged at the £25 per hour rate.

3.11 Where appropriate the applicant may be asked whether they would like to reframe their request so that it does not exceed the appropriate limit of £450. In these circumstances the applicant will have the choice of amending the request or alternatively paying the preparation fees.

4. Responding to your request

4.1 We will respond to requests within 20 working days and if there is likely to be a delay, we will tell you. This time limit might occasionally be extended if we have to consider complex legal issues, but we will always let you know. We will also explain why the delay is necessary and will always try to provide information as soon as possible.

4.2 We can refuse to give you the information you request if:

- The cost of providing the information exceeds £450 (based on 18 hours at a cost of £25 per hour).

- We do not hold the information you are looking for.
- The information is exempt from disclosure under the Act.
- Your request is considered vexatious or repeated.

4.3 Any requests for information that are not contained in the Publication Scheme will be passed to the Town Clerk to deal with under the FOI Act. A certain amount of guidance on dealing with requests is held by the Clerk, but it may be necessary that further specific guidance will be required from the Information Commissioner's Office. If a member of staff is unsure as to whether a request for information is routine or not, they will refer to the Town Clerk as certain personal information is covered by the Data Protection Act.

4.4 The applicant will be kept informed at all stages of the process of supplying the information requested, particularly if it is a complex request, when guidance may have to be sought from other agencies.

4.5 If the response is not satisfactory, the applicant can request a review by contacting the Mayor (Chair) of Macclesfield Town Council, whose contact details are available on the town council web site. If a review is requested, it will be completed within 20 working days (or within 40 working days in exceptional cases).

4.6 If the review(s) is not satisfactory, the applicant has a right of appeal using the Councils appeals process set out in section 5 of this policy or by contacting the Information Commissioner. The Information Commissioner's Office is Wycliffe House Water Lane Wilmslow SK9 5AF.

4.7 If a request is refused, the refusal notice will give the reasons for refusing the request and advise the applicant as to their rights of appeal – both internally by way of a complaint and, following that, by way of an appeal to the Information Commissioner.

4.8 Where a repeated request is received that is identical or substantially similar to a previous request from the same person, Macclesfield Town Council will consider this as a repeated request. Under the FOI Act, the council is not obliged to comply with repeat requests for information, unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

4.9 In reaching a decision about whether an application for access should be categorised as a repeat request Macclesfield Town Council will have regard to:

- The time that has elapsed since the previous request.
- Whether the request is identical or substantially similar to the previous request.
- Whether any relevant, new information has been generated since the previous request.
- A 'reasonable interval' will be deemed to be 40 working days.

5. Appeal Process

5.1 If the information requested cannot be supplied, the reasons for this will be communicated to the applicant immediately. The applicant has the right of appeal against the refusal, initially to the Council, but ultimately to the Information Commissioner.

5.2 Any initial appeal will be made to Macclesfield Town Council, in accordance with the council's Complaints Procedure. If the original decision not to supply the information is upheld by the Council, but is still not accepted by the applicant, then the applicant is able to appeal to the Information Commissioner.

5.3 Reasons for refusing information must be in accordance with the respective provisions of the legislation, including consideration of the public interest test where this applies.

Appendix 1 - Vexatious requests

Under the FOI Act, the council is not obliged to comply with vexatious requests.

If the Council believes that several different requestors are acting in unison as part of a campaign to disrupt the organisation by submitting numerous or burdensome FOI requests, then it may take this into account when determining whether any of those requests are burdensome.

The indicators to be used by the Council to identify whether a request for information is vexatious is taken from ICO Guidance – Dealing with Vexatious Requests <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

- Abusive or aggressive language - the tone or language of the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
- Burden on the authority - the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.
- Personal grudges - for whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.

- Unreasonable persistence - the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
- Unfounded accusations - the request makes completely unsubstantiated accusations against the public authority or specific employees.
- Intransigence The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.
- Frequent or overlapping requests - the requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.
- Deliberate intention to cause annoyance - the requester has explicitly stated that it is their intention to cause disruption to the public authority, or is a member of a campaign group whose stated aim is to disrupt the authority.
- Scattergun approach - the request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.
- Disproportionate effort - the matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet their request.
- No obvious intent to obtain information - the requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows them to possess already.
- Futile requests - the issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.
- Frivolous requests - the subject matter is inane or extremely trivial and the request appears to lack any serious purpose. The request is made for the sole purpose of amusement.