

# Freedom of Information/Environmental Information Regulations & Transparency Policy

Legal & Governance Services – February 2019



# Introduction

This policy is part of a set of information governance policies that support the delivery of the Combined Authority's functions and it should be read in conjunction with those policies. This policy sets out the Combined Authority's approach to processing requests made under the Freedom of Information Act 2000 ("FOI Act") and the Environmental Information Regulations 2004 ("The Regulations") to ensure compliance with the legislation, as well as meeting our obligations under the Local Government Transparency Code 2015 ("The Code").

## Related Policies & Legislation

Legislation:

- EU General Data Protection Regulation (EU/2016/679)
- Data Protection Act 2018
- Human Rights Act 1998
- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Re-use of Public Sector Information Regulation 2015

Combined Authority policies:

- Data Protection Policy
- Records Management, Retention & Disposal Policy

Other:

- Freedom of Information Code of Practice 4 July 2018
- Local Government Transparency Code 2015

Related Guidance is issued by the Information Commissioners' Office.

## Scope

This policy applies to everyone who has access to the Combined Authority's information, information assets or IT equipment. These people are referred to as "users" in this policy. The Combined Authority is the accountable body for Leeds City Region Enterprise Partnership (LEP) which is also covered by this policy.

This may include, but is not limited to Members of the Combined Authority, and the LEP board, employees, temporary workers, secondees, partners and contractual third parties.

All those who use or have access to the Combined Authority's information must understand and adopt this policy, and are responsible for ensuring the security of the Combined Authority's information systems and the information that they use or handle.

## Requests made under the Freedom of Information Act & Environmental Information Regulations

The Combined Authority believes that open government is best. The Combined Authority believes that accountability and transparency help to build public trust, and then bring real benefits to citizens and businesses in its area.

The Combined Authority will continue to review and develop its publication scheme, so that an increasing amount of information is made accessible in this way, rather than in response to individual information requests.

All requests made under the FOI Act and the Regulations need to be submitted in writing (including email). Verbal requests will not be accepted except where an individual is not able to make a written request in any form, in which case the IG team will liaise with the customer and make reasonable adjustments as necessary.

In assessing whether or not a request is asking for 'environmental information', the Combined Authority will broadly interpret the definition of environmental information (as set out in Section 39 of the FOI Act and Regulation 2(1) of the Regulations). A further explanation of what constitutes environmental information is included in **Appendix A**.

It is important to remember that any information the Combined Authority holds (both hard-copy and electronic, including any off-site back-up tapes) can potentially be subject to such a request and this includes emails and other forms of electronic communication such as instant messaging. Staff should bear this mind when sending electronic communications.

The Combined Authority will consider information requests in a way which is "applicant blind" and "motive blind", unless in exceptional circumstances where it considers that a request is vexatious. A person making a request under the FOI Act or the Regulations does not have to specify why they want the information. The Combined Authority will seek to disclose information in response to requests, unless a valid exemption applies. Brief explanations of commonly used exemptions under the FOI Act and the Regulations are included in **Appendix A**.

The Combined Authority will have proper regard to the privacy and integrity of individuals, and where they conflict, the Combined Authority will seek to strike an appropriate balance between the values of transparency and accountability on the one hand, and the individual's right to privacy on the other. Where appropriate, this will be achieved by redacting personal data from published information.

The Combined Authority acknowledges that in applying the public interest test it must take into account all the circumstances of the case. The Combined Authority will not seek to apply "blanket" exemptions and even if an exemption applies, will still consider the public interest in disclosure.

In applying the public interest test, the Combined Authority will give significant weight to the promotion of transparency and accountability as assumptions built into the FOI Act and the Regulations.

The Combined Authority will also give significant weight to the promotion of public debate, better public understanding of the Combined Authority decisions, and the informed and meaningful participation by the public in the democratic process.

In applying the public interest test, the Combined Authority will generally consult with relevant third parties, and will consider any representations made by third parties.

If the Combined Authority estimates that the cost of retrieving, locating and collating information will exceed £450 and/or 18 hours, it will ask the applicant to reduce the scope of their request, and will strive always to provide some information which is relevant to a request.

The Combined Authority will provide general information to the public on their rights under the legislation, and how these rights can be exercised.

The Combined Authority will seek to limit the use of confidentiality clauses by its contractors where appropriate.

The Combined Authority will provide advice to the public on how to request an internal review if anyone is unhappy with the response they have received. The Combined Authority will also make clear how to complain to the Information Commissioner's Office (ICO). Should the Combined Authority receive a request for an internal review, this will be completed (in most cases) within 20 working days and opinion will be sought from a member of staff who did not deal with the original request and where possible, of a higher seniority.

The Combined Authority will not accept requests 'transferred' by a third-party organisation. The Combined Authority will advise the third-party organisation to issue a response directing the requester to submit a separate request to the Combined Authority. This is to ensure the Combined Authority has the full statutory timescale in which to respond.

## Re-use of Public Sector Information

Individuals wishing to re-use public sector information must submit a request in writing, specifying the information they want to re-use and the purpose they intend to use it for. The Combined Authority will respond to such requests within 20 working days and will permit re-use under the Re-use of Public Sector Information Regulation 2015 unless the information in question has not already been disclosed, in which case the request will be handled under our FOI/EIR request handling procedure, or unless the information is not held as part of the Combined Authority's public task or is subject to third party intellectual property rights.

## Publication Scheme

The Combined Authority will comply with its obligation as set out in the FOI Act to adopt and maintain a publication scheme and will publish information on its website under the 'Freedom of Information' section.

In line with the ICO's model publication scheme, the Combined Authority will publish the following classes of information:

- Who we are and what we do.
- What we spend and how we spend it.
- What our priorities are and how we are doing.
- How we make decisions.
- Our policies and procedures.
- Lists and registers.
- The services we offer.

## Local Government Transparency Code

The Combined Authority will comply with its obligations as set out in the Local Government Transparency Code 2015 and publish all required information on its website under the 'Freedom of Information' section.

The information the Combined Authority is required to publish under The Code includes, but is not limited to the following:

- Spending and expenditure including grants
- Procurement information including contracts
- Organisation chart detailing senior management personnel
- Land and assets

The Combined Authority will ensure a working group of key personnel will meet on a regular basis to review the organisation's ongoing compliance.

## Roles & Responsibilities

It is important that all users (as defined in the scope of this policy) understand what is required of them and comply with this policy.

In the event that a member of staff gets a request for information that is not a "business as usual" request, and they think the rules in the Act or the Regulations might apply, then they must send the request to [freedom.info@westyorks-ca.gov.uk](mailto:freedom.info@westyorks-ca.gov.uk), or post it to Legal and Governance Services, Wellington House, Wellington Street, Leeds, LS1 2DE straight away. The request will then be logged into the corporate requests database, and sent to the point of contact for the relevant service, to deal with.

All members of staff must assist the point of contact for their service by providing them with all relevant information in a timely manner, so as to enable the Combined Authority to respond to information requests as soon as possible, and no later than twenty working days after receipt of such requests.

A member of staff who holds information which is subject to an information request made under the Act or the Regulations, must not alter, deface, block, erase, destroy or conceal any such information with the intention of preventing its disclosure.

All staff who are involved with the publication of information are responsible for obtaining the approval of Information Asset Owners before such information is published.

## **Information Asset Owners**

Heads of Service (or Service Managers where no Head of Service is in place) have been designated as Information Asset Owners (IAOs). IAOs are required to understand what information is held and operationally own the information contained in their business area and systems. They are accountable for the quality of and access to information created, received or obtained.

It is the responsibility of the relevant IAO to ensure that:

- all requests for information or re-use of information received by their service area are forwarded to the Information Governance Officer (IGO)
- all information relevant to a request is provided to the IGO
- any particular issues that exist or may arise in releasing information in response to a request, such as commercial sensitivity or confidentiality are brought to the attention of the IGO
- Information provided in support of responses to information requests is accurate, complete and satisfactorily addresses the points of the request.
- Information released from their service area under the transparency code is accurate, complete and satisfactorily meets the requirements of the code and is approved by the IAO prior to publication.
- Information relating to their service area which is required to be published under our transparency code obligations is done so in a timely manner and is kept up to date.

## **Information Asset Administrators**

Information Asset Administrators (IAAs) are nominated by their IAOs to assist the IAO in meeting their responsibilities and to promote best practice within their service area.

## **Information Governance Officer**

The Combined Authority's Information Governance Officer (IGO) is responsible for the management and co-ordination of all FOI and EIR requests the organisation receives and for providing corporate guidance and advice on compliance with the legislation, policies and codes of practice. The IGO will ensure that the communications team and the relevant IAO are copied in to all requests when asking for information. The IGO will co-ordinate regular meetings of key personnel to review ongoing compliance with this policy.

The IGO will report to the Regulatory Lawyer who will in turn report to the Combined Authority's Regulatory and Compliance Board, chaired by the Director of Corporate Resources, on matters of compliance with this policy and the relevant legislation.

## **Senior information Risk Owner**

The Director of Corporate Services has been designated the Combined Authority's Senior Information Risk Owner (SIRO). The role of the SIRO is to coordinate the development and maintenance of information risk management policies, procedures and standards for the Combined Authority, to ensure the Combined Authority has appropriate assessment processes for information risk, to review and agree actions in respect of identified information risks, to ensure that the Combined Authority's approach to information risk is

effective in terms of resource, commitment and execution and that this is communicated to all staff, provide a focal point for the resolution and/or discussion of information risk issues and to ensure that the Combined Authority and the Governance and Audit Committee is adequately briefed on information risk issues.

## **Training**

Appropriate training will be made available for existing staff that have responsibility for information governance duties.

All staff will be made aware of their obligations for information governance through effective communication programmes.

Each new employee will be made aware of their obligations for information governance during an induction-training programme.

Training requirements will be reviewed on a regular basis to take account of the needs of the individual, and to ensure that staff are adequately trained.

## **Policy Compliance & Audit**

Failure to observe the standards set out in this policy may be regarded as serious and any breach may render an employee liable to action under the Combined Authority's Disciplinary procedure, which may include dismissal.

Non-compliance with this policy could have a significant effect on the efficient operation of the Combined Authority and may result in financial loss and an inability to provide necessary services to our customers. The Combined Authority will undertake audits as required to monitor compliance with its information governance policies.

Any user who does not understand the implications of this policy or how it may apply to them, should seek advice from their immediate line manager and/or the Legal and Governance Services Team.

## **Equality impact assessment (EIA)**

In the creation of this policy, consideration has been given to any possible adverse equality impact for the following groups: disability; gender; gender reassignment; marital status (including civil partnerships); sexual orientation; race; religion or beliefs; age; pregnancy and maternity. The policy is considered to have little or no adverse equality impact.

## **Policy Approval**

This policy has been produced by the Legal & Governance Services Team in consultation with our recognised Trade Unions, UNISON and Unite and has been approved by the Senior Management Team.

This policy will be reviewed on an annual basis, to ensure that it continues to meet the needs of the Combined Authority and ensure compliance with relevant legislation. Where

appropriate, this policy will be updated, in consultation with our recognised trade unions and other relevant parties.

## General data protection regulations (GDPR)

This policy has been considered in line with the latest GDPR principles and all paperwork kept in strict accordance of timelines, the right to rectify errors, the right for information to be forgotten (after the designated timelines) and the right to privacy throughout the process.

Personal data provided to the Combined Authority as part of the FOI/EIR request process (e.g. name, address, email address, telephone number) is processed under our statutory obligation to respond to FOI and EIR requests. The data is not processed for any other purpose or shared with any third parties. The data will be retained for a period of 1 year following the completion of requests and then securely destroyed. Our full privacy notice can be viewed on our website at <https://www.westyorks-ca.gov.uk/privacy-notice/>

<b>POLICY APPROVAL</b>
<p>Authorised on behalf of the West Yorkshire Combined Authority by:</p> <p>Name:</p> <p>Signature:</p>
<p>Authorised on behalf of UNISON and Unite by:</p> <p>Name: _____</p> <p>Signature:</p>
<p>This policy is issued and managed by the Legal and Governance Services Department</p>

# Appendix A

## Dissemination of Environmental Information - type of information

Items in Article 7.2 of the Directive,

- (a) Texts of....regional or local legislation on the environment, or relating to it.
- (b) Policies, plans and programmes relating to the environment.
- (c) Progress reports on the implementation of the items referred to in (a) and (b) when prepared or held in electronic form by public authorities.
- (d) Where appropriate regional or local reports on the state of the environment at “regular intervals not exceeding four years”, including information on the quality of, and pressures on, the environment.
- (e) Data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment.
- (f) Authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found.
- (g) Environmental impact studies and risk assessments concerning the environmental elements or a reference to the place where the information can be requested or found.

And facts and analyses of facts which the Combined Authority considers relevant and important in framing major environmental policy proposals

## Commonly Used Exemptions – FOI Act

**Section 12** – Time/Cost Limit. If it would take more than 18 hours to retrieve, locate and/or extract the information requested, we can refuse the request provided we explain how the requester can refine their request to fall under this 18hr timeframe when re-submitting their request.

**Section 21** – Information Reasonably Accessible by Other Means. If the requested information is already in the public domain, we can provide a link to the information instead of having to re-produce it.

**Section 22** – Information Intended for Future Publication. If the requested information is planned to be published at a future date. This exemption is subject to the public interest test.

**Section 38** – Health & Safety. If the release of the requested information would compromise the health and safety of any living individual. This exemption is subject to the public interest test.

**Section 40** – Personal Information. If the requested information includes the personal information of another individual and to release the information would constitute a breach of that individual's rights under the Data Protection Act.

**Section 41** – Confidentiality. If the requested information is subject to a duty of confidentiality and to release the information would be likely to result in an actionable breach of confidence being brought against the organisation. This exemption is subject to the public interest test.

**Section 43** – Commercially Sensitive Information. If the requested information includes information which is commercially sensitive to the Combined Authority or third parties and to release the information would prejudice the interests of either organisation. This exemption is subject to the public interest test.

### **Commonly Used Exceptions – Environmental Information Regulations**

**Regulation 12(3)** – Personal Information. If the requested information includes the personal information of another individual and to release the information would constitute a breach of that individual's rights under the Data Protection Act.

**Regulation 12(4) (d)** – Unfinished Documents or Incomplete Data. If the requested information is for documentation which is not yet finished (including drafts and documentation being produced relating to the formulation of policy). This exemption is subject to the public interest test.

**Regulation 12(4) (e)** – Internal Communications. If the requested information is for written or electronic communications between Combined Authority staff members only. This exemption is subject to the public interest test.

**Regulation 12 (5) (c)** – Intellectual Property Rights. If the information constitutes the intellectual property rights of a third party and we do not have permission to release the information. This exemption is subject to the public interest test.

**Regulation 12 (5) (e)** – Confidentiality of Commercial Information. If the information constitutes the commercial information of either the Combined Authority or a third party, if releasing the information would result in an actionable breach of confidence and if disclosure would adversely affect the confidentiality. This exemption is subject to the public interest test.

**Regulation 12 (5) (f)** – Interests of the Person who provided the Information. If the information has been obtained from a third party and it has been supplied with the

expectation that it would not be released or has not agreed to the wider release of the information. This exemption is subject to the public interest test.

It is important to remember that the above list is not exhaustive and that very few exemptions are absolute and may be subject to further qualifications such as the public interest test. It is important to discuss the use of exemptions with the Information Governance Officer to ensure accuracy and compliance.