

Access to Information Policy

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Related Legislation/Applicable Section of Legislation	Freedom of Information Act 2000 General Data Protection Regulation Environmental Information Regulations 2004 Data Protection Act 2018 The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 Lord Chancellor's Code of Practice The Re-use of Public Sector Information Regulations 2005
Related Policies, Procedures, Guidelines, Standards, Frameworks	Complaints, Comments and Compliments Policy Data Protection Policy IT Policies Retention and Disposal Schedule
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1. Introduction

Information is a valued corporate and public asset. The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) gives the public a general right of access to information held by public authorities, with the aim to increase openness and accountability in the public sector.

Aim

This policy covers both the Freedom of Information Act 2000 and Environmental Information Regulations 2004 and is a statement of how the Council intends to ensure compliance with the legislation.

Scope

The policy applies to all Council employees and elected representatives. All information held by the Council is potentially eligible for release but certain categories may be protected and therefore an exemption under the FOIA or an exception under the EIR will apply. This policy applies to all information the Council processes regardless of how it was created or received, including information in the possession of third parties which is held on behalf of the Council. It applies to all forms of information, whether the in paper or electronic format.

Responsibilities

The Chief Executive has overall responsibility for the Access to Information Policy.

Each Director is responsible for ensuring operational compliance with this policy within their own departments and for routine requests where information is released in accordance with a request, whether written or not.

All Elected Members and staff members have responsibility for following the Access to Information policy and procedures.

The Policy Team, Corporate Services Department is responsible for managing all requests and providing advice on the application of the legislation and policy.

Relevant staff members will have responsibility for answering the requests and will provide advice and guidance on whether or not an exemption or exception applies.

The Chief Executive is the Qualified Person for determining whether disclosure would be likely to prejudice the effective conduct of public affairs (Section 36, FOIA) and will have the final say on disclosure.

2. Access to Information

Access to Information is principally governed by the following legislation:

- Data Protection Legislation - UK General Data Protection Regulation (GDPR) 2016 and the Data Protection Act 2018. This relates to personal information held by the Council and the [right of an individual to access their own personal information](#).
- The [Freedom of Information Act 2000](#) (FOI), provides the right of access to any information held by public bodies and not subject to any statutory exemptions. Requests must be in made in writing. The Freedom of Information Act 2000 provides public access to information held by public authorities. public authorities are obliged to publish certain information about their activities (Publication Scheme); and members of the public are entitled to request information from public authorities (Requests for Information). The Council has 20 working days to deal with a request and provide any relevant information subject to limited exemptions.
- The [Environmental Information Regulations Act 2004](#), (EIR) enables access to environmental information held by the Council. For example, information about land development, pollution levels, energy production and waste management. Requests can be made verbally or in writing.

The Freedom of Information Act and Environmental Information Regulations are comparable with some minor differences in their application. Due to the similarity between them, this policy will mainly refer to the Freedom of Information Act throughout. **Appendix A - Environmental Information Regulations** is available for further details.

3. Publication Scheme

Under the Freedom of Information Act, all public authorities are required to adopt and maintain a publication scheme. The publication scheme is designed to increase transparency and allow members of the public to routinely access information relating to the function of a public authority. The publication scheme commits an authority to make information available to the public as part of its normal business activities. The information covered is included in the classes of information mentioned below.

Classes of Information:

- **Who we are and what we do.**
Organisational information, locations and contacts.
- **What we spend and how we spend it.**
Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- **What our priorities are and how we are doing.**
Strategy and performance information.
- **How we make decisions.**

Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.

- **Our policies and procedures.**
Current written protocols for delivering our functions and responsibilities.
- **Lists and registers.**
Information held in registers required by law and other lists and registers relating to the functions of the authority.
- **The services we offer.**
Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage or is difficult to access for similar reasons.

During the implementation of this Policy, it will be a priority to consolidate the information Council routinely publishes online as prescribed by the legislation.

If information requested is contained within the Council's publication scheme, the request will not be treated as a formal request (see **Appendix B** - The Publication (Public Information) Scheme). The requestor will be signposted to access the information via the Scheme.

4. A request for information

Anyone is entitled to request information from public bodies, regardless of their age, nationality, location, motive or history. Any information held by the Council is eligible for release. However, a limited number of exemptions may be applied to protect some information that truly warrants such protection.

Each legislation provides a right to access recorded information, not specifically documents. The information may be contained in reports, policies, letters, emails etc., together with other information that has not been requested. The information may be extracted from relevant documents and provided in a different format, in accordance with the appropriate legislation.

The generic term of Request for Information is used for formal requests for all information held by the Council, irrespective of which access regime is appropriate. **Appendix C** provides more details on what constitutes a Request for Information. Requests for personal information are dealt with separately under the Council's Data Protection Policy.

4.1. Valid Requests

Requests should be made in writing, either in hard copy or electronically; state clearly

what information is required; and state the name of the applicant and an address for correspondence. Whilst requests for 'environmental information' may be made verbally, under the EIRs, applicants will be encouraged to submit written requests to avoid any misunderstanding of the request.

Requests can also be made via social media (Twitter and Facebook) however, we may require further information to fully complete this request. To enable us to respond to any request fully we require an email or postal address where we can send a reply.

Applicants must provide their real name and not use a pseudonym. Both email and postal addresses are acceptable. Public authorities do not have to comply with requests that do not meet the above requirements.

The response to a request will confirm whether or not the Council holds the information, unless confirming whether or not the information is held would disclose exempted information. If an exemption does not apply, the Council will provide the requested information. If an exemption does apply, the Council will explain why the information cannot be provided, quoting a statutory exemption and the reasoning behind it.

A request for information may only be refused if an exemption under the relevant legislation applies. In some cases, only some of the information will benefit from an exemption, in such cases the exempt information will be redacted (removed/blacked out) from that provided. The response will state which exemption the Council relies on and the reasoning behind it and will provide details to the requester of the Internal Review Process.

4.2. Clarification

Where the Council receives an unclear or ambiguous request for information, it has a duty to provide help and assistance and we will offer to help the requester clarify the request. The Council will answer a request based on what the requester has actually asked for, and not on what it thinks they would like.

Examples of unclear or ambiguous requests might be where there is more than one objective reading of the request, or the actual request suggests that other information would be of more use.

5. Time Period for Compliance

The Council must inform the applicant, in writing, whether it holds the information requested and, if so, communicate that information to the applicant promptly, but not later than 20 working days after receipt of the request. Non-working days are classified as being Saturdays, Sundays and all recognised public bank holidays.

The 20 working days starts from the day after the Council receives the request. Should clarification be required, the time period will be paused until such clarification is received.

The date of receipt is the date the Council actually receives the request. If the request

is by way of email, then it is the date the email arrives in the recipient's mailbox. If an automated 'out of office' message provides instructions on how to redirect the message, then the Council will not be considered to have received the request until it is re-sent to the alternative contact given. Similarly, if a request for environmental information is made, and an answer phone message provides an alternative contact point, then the date the clock starts will be when contact is made with the alternative contact point.

If the Council is considering applying an exemption which requires consideration of the public interest test, the Council may require further time beyond the normal 20 working day limit. In this instance, the Council will notify the applicant that the request for information engages the public interest test and will provide an estimate of a date by which it expects to reach a decision.

6. Charging Fees

Council can only charge a fee in accordance with The Freedom of Information Act. No fee may be charged unless the cost of meeting the request exceeds £450. If the estimated cost of meeting the request exceeds £450, the Council may charge a fee in accordance with the Regulations. Alternatively, Council may refuse to comply with the request or advise the applicant to focus their request in order to stay below the appropriate fees limit.

The Council may also charge for disbursements (i.e. photocopying and postage costs).

Where an information request is for environmental information, there is no limit for charges above which a request can be refused. There is no fee structure but charges must not exceed the costs reasonably attributed to the supply of the information.

7. Non-Applicable Requests for another Public Body

If the Council receives a request for information that it does not hold, but it is aware that the information is held by another public authority, the Council will provide as much assistance as possible to the applicant in the transfer of their request to the authority which holds the information. This may be by contacting the applicant and directing them to the appropriate public authority who holds the information, by suggesting that another application be made direct to the authority which holds the information or, if details are known, providing the applicant with contact details.

If the Council holds any of the information that has been requested, it shall treat that part of the request as an official request for information and process it accordingly. The Council shall inform the applicant of the information it does not hold at the earliest opportunity and provide as much assistance as is reasonable to enable the applicant to locate it elsewhere.

If the Council is unable to provide any advice or assistance as to where the applicant might direct a further request for the information, or if it is inappropriate for those details to be provided, the Council will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

8. Consultation with Third Parties

The Council recognises that the disclosure of information may affect the legal rights of a third party. The Council recognises the importance of Data Protection Legislation and the Human Rights Act and this policy is written in accordance with their terms. The Council further recognises that unless an exemption is provided for in the FOI Act, it will be obliged to disclose that information in response for a request.

If the consent of a third party is required prior to disclosure of information, the Council will seek to consult with that third party, with a view to seeking their consent to the disclosure, at the earliest opportunity, unless such a consultation is not practical.

The consultation may assist the Council to determine whether an exemption under the FOI Act applies to the information requested, or the views of the third party may assist the Authority to determine where the public interest lies under Section 2 of the FOI Act. If the cost of consultation with the third party is disproportionate, the Council may consider it not appropriate to undertake that consultation.

The Council will not undertake consultation, if it does not intend to disclose the information for some other legitimate ground under the terms of the FOI Act or the views that the third party could have no effect to the decision of the Authority, or that no exemption applies. A refusal to consent to disclosure by a third party will not on its own mean that information cannot be disclosed.

The Council will only accept information from third parties in confidence if that information would not otherwise be provided to the Council to assist the delivery of the Council's functions.

9. Tenders and Contracts

The Council is obliged to disclose that information in response to a request unless an exemption/exception applies in relation to any particular part of a contract. All tender and contract documentation should contain the following standard paragraphs:

"Tenderers should be aware that information provided in the completed tender and contractual documents could be disclosed in response to a request under the Freedom of Information Act or the Environmental Information Regulations.

Mid and East Antrim Borough Council will proceed on the basis of disclosure unless an appropriate exemption/exception applies. No information provided by tenderers will be accepted "in confidence" and Council will accept no liability for loss as a result of information disclosed in response to a request under the Freedom of Information Act/Environmental Information Regulations.

Mid and East Antrim Borough Council has no discretion whether or not to disclose information in response to a request under the Freedom of Information Act/Environmental Information Regulations, unless an exemption/exception applies.

Disclosure decisions will be taken by the appropriate Council Officers having due regard to the exemptions/exceptions available and the Public Interest.

Tenderers should be aware that despite of the availability of some exemptions/exceptions, information may still be disclosed if the Public Interest in its disclosure outweighs the Public Interest in maintaining the exemption/exception.

Tenderers are advised against recording unnecessary information.

In accordance with the Lord Chancellor's Code of Practice on the discharge of public functions, Mid and East Antrim Borough Council, will not accept any contractual terms that purports to restrict the disclosure of information held by the Council in respect of the contract or tender exercise save as permitted by the Freedom of Information Act/Environmental Information Regulations. The decision whether to disclose information rests solely with Mid and East Antrim Borough Council.

Mid and East Antrim Borough Council will consult with tenderers, where it is considered appropriate, in relation to the release of controversial information. Tenderers will be notified by the Council of the disclosure of information relating to them".

10. Refusal of Request

If the Council refuses a request for information relying on an exemption, it will notify the applicant which exemption has been claimed and, unless it is obvious, why that exemption applies. If the reasoning behind the exemption, or the exemption itself, results in the disclosure of information which would itself be exempt, then the Council may not provide that reason. See **Appendix D** - Refusing a request for information.

If the Council claims that the public interest (See **Appendix E** - The Public Interest Test) in maintaining the exemption outweighs the public interest in disclosure, then the Council must state this in its decision, together with the public interest factors it has considered and formed a material part of the decision.

11. Appeals Process (Internal Review)

Any individual that perceives that the Council is not complying with its statutory duty may use this appeals process, known as an 'Internal Review'. The internal review process must first be utilised before a referral is made to the Information Commissioner. A request for an Internal Review may be made if the requestor is not happy with how their request has been handled.

Every response to a request for information will detail how to request an internal review. There is no stipulation in legislation for how long an internal review is required

to take, however, Mid and East Antrim Borough Council will aim to complete this within 20 working days.

Any review of a decision made relating to a request for information, will be reviewed by a person who was not party to the original decision. If, following the review, the original decision is reversed and information is now disclosed, the reasons for the reversal will be notified to the applicant together with the information requested. This will be done at the earliest opportunity. If the decision to refuse disclosure is upheld, the reasons for the refusal will be notified to the applicant.

If, having exhausted the internal appeals procedure, the applicant is still dissatisfied, they shall be made aware of their right to apply to the Information Commissioner, as follows:

'If you are not content with the outcome of an internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.'

12. Vexatious and Repeated Requests

The Information Commissioner recognises that some individuals/ organisations may try to abuse their rights with request that are unreasonable and which would impose substantial burdens on the financial and human resources of the Council.

The Information Commissioner's approach is that a request (or the latest in a series of requests) may be treated as vexatious where it imposes a significant burden on the Council in terms of expense or distraction.

Other criteria for a request to be treated as vexatious include:

- It clearly does not have any serious purpose or value;
- It is designed to cause disruption or annoyance;
- It has the effect of harassing the Council; and
- It can be fairly characterised as obsessive or manifestly unreasonable.

These are not exhaustive and where a request may be considered as vexatious the most recent Information Commissioner's Office (ICO) guidance should be consulted.

13. Communicating the Policy

The Access to Information policy will be clearly communicated and accessible to all of the Council's customers and stakeholders.

The Policy team delivers a programme of training on Access to Information and is available for tailored sessions to address specific departmental needs. All Elected Members and relevant staff have access to the policy and supporting material on the shared drive or MinutePad.

14. Data Protection

Mid and East Antrim Borough Council is legally obliged to process personal data gathered from individuals with whom it interacts. The Council fully complies with the provisions of the Data Protection Act 2018 and handles personal data in accordance with its principles.

All information and personal data provided in relation to access to information requests will be treated in a secure manner and will be used for the purpose for which it was submitted, in accordance with our Data Protection Policy.

In line with Data Protection legislation, the personal details you provide to us as a result of making a request will not be disclosed to a third party. Should you make a complaint to the Information Commissioner, we may disclose such information to assist with their investigation.

A copy of the Council's Privacy Notice is available at <https://www.midandeastantrim.gov.uk/privacy-notice>.

15. Records Management

It is an offence to wilfully conceal, damage or destroy information in order to avoid responding to a request. Destruction of Council records must be in accordance with the Council's approved Retention and Disposal Schedule.

16. Monitoring and Review

The Policy Manager will be responsible for the monitoring and review of the Access to Information Policy, to include reporting to Council's Policy and Review Committee every 12 months.

Appendix A - Environmental Information Regulations 2004

Where an access request is for Environmental Information it should be dealt with under the Environmental Information Regulations 2004 (EIR). These regulations have been written to take account of FOI legislation and as such share many common elements, however a few notable differences exist in that:

- a) requests can be verbal or in writing;
- b) there is no pause in the 20-day response time whilst charges for the supply of information are being negotiated;
- c) there is no upper limit for charges above which a request can be refused;
- d) there is no fee structure, but charges must not exceed the costs reasonably attributed to the supply of the information;
- e) the response time can be extended in line with the regulations in the case of complex or voluminous requests; and
- f) the public interest test (**Appendix E**) is applied in each potential case of refusal based on an exemption.

Environmental Information is taken to mean information that relates to:

- a) the state of the elements of the environment such as: -
 - Air and atmosphere
 - Water
 - Soil
 - Land
 - Landscape and natural sites, wetlands and coastal and marine areas
 - Biological diversity and its components including genetically modified organisms.
- b) the interaction between the elements in (a) above;
- c) factors such as substances, energy, noise, radiation or waste;
- d) emissions, discharges and other releases into the environment;
- e) environmental measures such as policies, legislation, plans, programmes and agreements;
- f) cost benefit and other economic analyses and assumptions used in environmental decision making; and
- g) the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are affected by anything above.

Routinely produced environmental information and specialist reports should wherever possible be included within the Publication Scheme.

Appendix B - The Publication (Public Information) Scheme

The Council will endeavour to be as transparent and open as possible. There will be a presumption in favour of public access to all information held, unless there is a statutory or compelling business reason against publication. The more information that is pro-actively made available via the scheme the better. It will demonstrate the Council's willingness to adopt an open approach to its business and will also help to reduce the number of 'one off' access requests that would otherwise involve staff in the potentially resource-hungry activities of locating, retrieving, collating, editing, reproducing and dispatching information.

For the scheme to work as effectively as possible all staff will need to accept responsibility for identifying existing or new information that may be suitable for inclusion. Such information should be brought to the attention of the director or head of service, who will determine whether the information should be included. When considering the best medium of publication of new information, the Council are committed to using electronic means in the first instance.

General criteria for inclusion:

The focus should be on information that: Is known to be of public interest, and/or contributes to the principle that the Council's activities and decision-making processes should be seen to be open and transparent, e.g. internal policies and procedures, codes of practice, strategies, plans, minutes of key meetings, etc.

What type of information may be suitable?

- Committee agendas, reports and minutes that are already routinely made publicly available.
- Records of other meetings that contain background information in respect of decision-making processes and which would be in the public interest.
- Strategies, service plans, business plans, policy documents, codes of practice, procedural documents, consultation documents and other information that would fall into this category.
- Any documentation that explains how the Council assesses whether an individual is eligible for service provision, e.g. assessment criteria, eligibility criteria information.
- Information that the Council already knows is regularly requested.

What type of information may not be suitable?

Whilst it is clearly desirable to make as much information pro-actively available as possible it is also essential that the published information is properly managed and maintained. There is little value in information that has been superseded, is out of date or obsolete or simply no longer relevant. Teams need to be mindful of the potential resource requirements of managing large quantities of published information and ensure that they have made arrangements to maintain it in good order.

In view of this it is worth thinking initially about excluding information that:

- Has a very short shelf life and/or will require frequent updating.
- May be of interest to the public, but which is not in the public interest. These two things are not the same.
- Is largely exempt and will require major editing/redacting (editing or revising a piece of writing) to make it suitable for inclusion.

Some tips about publishing information

- It may be possible to anticipate requests, particularly where there are major local issues that are likely to attract public attention. In these cases, it would be sensible to include background papers and information in the scheme from the outset.
- Consider whether information that is sensitive or exempt can be included within appendices, so that the main body of the report can be included in the catalogue. Considering the structure of reports in this way will make access requests easier to respond to in the long run. Remember a whole report is not exempt if just a few paragraphs contain sensitive material.
- When information is produced or generated consider whether it is appropriate for inclusion within the scheme and if it is follow the procedures to make sure this happens. Remember that the catalogue is a 'living' index of current information that the Council believes to be in the public interest, and which promotes openness and transparency of decision-making.

The publication scheme is intended to be organic and to grow and must be kept up to date. It shall be the teams' responsibility to up-date their respective parts of the scheme, and to notify the Policy Team of any changes made.

Appendix C - What Is a Request for Information?

The Council routinely provides information as part of its normal Council functions on a day-to-day basis. The access regimes under Environmental Information Regulations, the Freedom of Information Act and the General Data Protection Regulations (GDPR) are so broad that they have the potential to encapsulate most of what the Council does routinely.

This guidance note sets out what the triggers will be for engaging the official process for dealing with requests for information under the above legislation.

The following will not, as a rule, engage the official request for information process:

- i. If the information is reasonably accessible to the public by such means as it being published on the internet, noted in the publication scheme, or available for inspection, then this will not routinely trigger a request for information. This may include information leaflets, published reports or general information on the internet.
- ii. Information that is released as part of the Council's normal business process. The Council routinely provides information as part of their day to day processes, for example Minutes of Council Meetings, Strategies and Plans etc. Requests for information are not intended to replace existing business systems that are functioning adequately.
 - iii. Correspondence that is not a request for information.
 - iv. Requests that do not include a name and address for correspondence (or an email address).

It is important for all staff to recognise official requests for information at an early stage. These requests must be directed to the Policy team who will enter the details into the official Council's system for managing requests. This is to ensure that the Council can comply with the request within the legislative time periods and to enable sufficient monitoring and auditing of the Council's compliance.

Examples of when official requests for information should be logged are:

- v. Requests that consciously engage any or all of the information access regimes. Those requests being, for example, requests which specifically mention their right of access under FOIA, DPA, GDPR or EIRs.
- vi. Where the public authority requires further information from the applicant in order to identify and locate the information requested.
- vii. Requests that will not receive a reply within ten working days from the date of request.
- viii. Requests which result in information being withheld for any reason under an exemption or exception from the right of access.
- ix. Requests that are not processed because the public authority estimates the cost of compliance would exceed the appropriate limit.
- x. Requests that are not processed because the public authority considered the request to be vexatious or repeated.
- xi. Requests that may prejudice third parties and/or the Council, its Members or its staff.

Appendix D - Refusing a Request for Information

Whilst the Freedom of Information Act provides for the right of access to information held, it also affords a number of exemptions from this right, in order to permit public authorities to withhold some or all of the information requested, where a justifiable reason exists. Requests for information that are deemed to be vexatious or repeated can also be refused.

The exemptions fall into two categories:

- Absolute Exemptions. Where a public authority may withhold the information without considering any public test arguments.
- Qualified Exemptions. Although an exemption may apply to the information, it will, nevertheless, have to be disclosed, unless it can be demonstrated that the public interest in withholding the information, is greater than the public interest in releasing it.

1. Absolute Exemptions

The absolute exemptions that are most likely to apply to the Council are:

- Information accessible by another means, (Section 21). This applies to information that is reasonably accessible to an applicant through another source, even if it is available only on payment. This type of information could be:
 - included in the Council's Publication Scheme (Appendix B)
 - Information accessible through the Council's web-site
 - Books, leaflets etc. published by the Council
 - Information available under existing legislation, e.g. Planning Applications.The applicant should be directed to where the information can be found and may need to receive advice and assistance on how to access the information.
- Information in court records (Section 32). This includes information in documents served for the purposes of legal proceedings, filed with a court, or held by a person conducting an inquiry or arbitration.
- Personal information relating to the subject (Section 40). This exemption is only absolute in respect of requests by applicants to access their personal information. Such requests will continue to be dealt with under the Data Protection Legislation.
- Information provided in confidence (Section 41). This exemption only applies to information provided in confidence to the authority by external persons or agencies, including other public authorities, and where disclosure would result in an actionable breach of confidence. This means that the Council would need to apply the common law test for breach of confidence which includes an inherent public interest test. The Code of Practice under Section 45 of the Act states that a public authority should only accept information in confidence from third parties if it is necessary to obtain that information in connection with any

of the authority's functions.

- Information that is prohibited from disclosure by law (Section 44). This applies to information the disclosure of which is prohibited by any legislation, or European Community obligation, or if disclosure would be a contempt of court.

2. Qualified Exemptions

The qualified exemptions most likely to apply to the Council are:

- Information intended for future publication (Section 22). This applies where the Council plans to publish information in the future, normally in its Publication Scheme, and it is reasonable, at the time the request is made, not to disclose it until then. It may also apply to information relating to research projects or surveys where it would be inappropriate to release the information until the project has been completed. In other cases, where information is due to be published, the applicant must be informed when such publication is planned.
- Investigations/proceedings conducted by public authorities (Section 30) This exemption covers information relevant to criminal investigations and proceedings, and information obtained from confidential sources for criminal or civil proceedings.
- Law enforcement (Section 31). This exemption applies to information, the disclosure of which would be likely to prejudice: the prevention and detection of crime; the apprehension and prosecution of offenders; the administration of justice.
- Prejudice to the effective conduct of public affairs (Section 36). This exemption can only be applied by a 'qualified person'. In the case of the Council this is the Chief Executive.
- Health & Safety (Section 38). This exemption applies to information which would, or would be likely to, endanger the physical or mental, health or safety of any individual.
- Environmental Information (Section 39). This exemption allows for the disclosure of environmental information under the Environmental Information Regulations (EIR), see Appendix B.
- Personal information relating to a third party (Section 40). Broadly speaking requests for information about someone else will be dealt with under FOI, but disclosure should not be made if it would breach any of the Data Protection principles, or the third party has not been made aware of the disclosure.
- Legal professional privilege (Section 42). This applies where a claim to legal professional privilege could be maintained in legal proceedings. This exemption qualifies the rights of access under the Act by reference to a particular rule of litigation. According to that rule, legal professional privilege ("LPP") protects

confidential communications between lawyer and client and certain other material created for the purpose of the litigation, by way of an exception to the general rules of disclosure applicable to civil and criminal litigation. If material is subject to LPP a party does not have to disclose it during the course of legal proceedings. The identification of LPP material is a question of law and legal advice must be sought before applying this exemption.

- Commercial interest (Section 43). This exemption applies to trade secrets and to information, the disclosure of which would, or would be likely to, prejudice the commercial interests of any person including the authority. This is the exemption which would be relevant to most commercially sensitive information held by local authorities, however, it would need to be demonstrated how disclosure would affect the commercial interest and is further subject to a public interest test.

A full list of the exemptions under the FOI Act are available from the Information Commissioner's website at <https://ico.org.uk/>.

For EIR exceptions, rather than exemptions may apply, most exceptions are subject to the public interest test; more information can be found at <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/>

3. Vexatious and Repeated Requests

In determining whether a request should be refused because it is considered vexatious, account must be taken of:

- The history of requests submitted by the applicant;
- Repeat requests submitted by the application (see below); and
- Whether an applicant is habitually and persistently submitting requests where there appears to be no reasonable grounds for them to do so and where there is a strong likelihood that such requests are being made to intentionally cause harassment, divert resources and to disrupt the proper workings of the Council.

The term vexatious must be applied to the activities of the applicant based on substantiated evidence and not to the applicant themselves.

Repeated Requests

In determining whether a request should be refused because it is considered to be repeated account should be taken of:

- The time that has elapsed since the previous request;
- Whether the request is identical or substantially similar to the previous request; and
- Whether the information has changed or new information has been generated. In this case it would be reasonable just to provide the new information.

Appendix E - The Public Interest Test

Where the Council wishes to apply one of the qualified exemptions to prevent disclosure of the information requested, it will have to consider the public interest in maintaining the exemption.

The public interest test requires that information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Generally, the public interest is not necessarily what the public are interested in, i.e. matters that the public may be curious about, interested in or amused by, but more about information that could benefit the wider community if it were to be made available.

Disclosure should be considered to be in the public interest where it would:

- Further the understanding of and participation in public debate
- Promote accountability and transparency by public authorities for decisions taken by them
- Promote accountability and transparency in the spending of public money
 - Allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions
- Inform the public of any danger to public health and safety
- Contribute to the administration of justice, enforcement of the law.

Factors such as embarrassment, risk of misinterpretation and the seniority of the Officer involved are not to be considered when determining the Public Interest.

A copy of the Public Interest Test template which Mid and East Antrim Borough Council use can be found below.

Public Interest Test

Information requested:	
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Exemption applied:	
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How would the public interest best be served by withholding the information?

Would the public interest be served where access to the information would:	
Further the understanding of, and participation in, debate of issues of the day	Yes/No (delete appropriate) as
Facilitate the accountability and transparency of public authorities for decisions taken by them	Yes/No (delete appropriate) as
Facilitate the accountability and transparency in the spending of public money	Yes/No (delete appropriate) as
Allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions	Yes/No (delete appropriate) as

State how the balance works in favour of disclosing or withholding the information: