

## **Freedom of Information Act 2000 and Elected Members**

The Freedom of Information Act came into force on 1 January 2005. It gives the public and other bodies a mechanism by which they can request information that is held by a “public authority” e.g. Central Government, NHS, Police, Schools, BBC and of course the Local Authority.

The Act means that anyone can request information that is held by the Council, subject to a number of exemptions/fees. It covers all information HELD including financial information, policy information and historical information and can also include information about you as an elected member.

The Council has a duty to advise and assist any person who makes a request to a public authority for information and we must also inform them whether:

- a) The Council holds that information, and
- b) Supply that information (subject to a number of exemptions or fees).

There are 24 exemptions within the Freedom of Information Act that can be used to prevent the release of certain information including sensitive commercial information, personal information or information that is readily available by another means.

Any exemption has to be balanced against the public interest test.

Every public authority is required to adopt and maintain a publication scheme setting out the classes of information it holds, the manner in which it intends to publish the information, and whether a charge will be made for the information. This document informs the public of the types of information that is routinely made available by the Council and can be found on the Council’s website.

Individuals have the right of access to information about themselves under the Data Protection Act 2018.

### **Submitting a request**

In general Councillor’s information requests are dealt with through members’ casework arrangements, however in some cases it may be more appropriate to treat them as Freedom of Information requests i.e. when they are submitted on behalf of a constituent.

In order for a request to be valid under the Freedom of Information Act, the request has to meet the following criteria: -

1. The request must be in writing. This includes letters and emails.
2. The request must include a name and address for correspondence. An email address will suffice.
3. Lastly, the request must include a description of the information that the requester is looking for.

The Council must comply with requests promptly, and should provide the information within 20 working days, unless an exemption applies or extra time is needed to consider the public interest test.

Please note that the request does not have to mention the Freedom of Information Act itself, or have to be on a special form.

So if you receive a request for information from one of your constituents, and it meets the three criteria above, then please send it to [foi@middlesbrough.gov.uk](mailto:foi@middlesbrough.gov.uk) as soon as you can. If you wish to submit an FOI request, then simply send to the same email account.

### **Freedom of Information and Elected Members**

There may be times when the public ask for information about Councillors or the work they do. Each request will be considered on its own merit. However, the Council first needs to determine whether it holds the information.

#### **When does the Council hold information?**

Elected Members, are not employed by Middlesbrough Council, however:

- If an elected member uses the local authority's computer or office facilities for political or representative purposes, this information is held by the local authority only on behalf of the councillor, and is **not covered by the FOIA**.

Information received, created or held by an individual councillor will be subject to the FOIA, if the councillor is acting on behalf of the local authority for example.

- A cabinet member acting in their executive function is acting on behalf of the local authority. Therefore, information produced or received by them in that role is produced or received by the local authority.
- Information received or produced by a councillor acting as a representative of a council is covered by the FOIA. This would include, for example, where a councillor is representing the authority on a regional board or drafts an authority's response to a consultation.

Information will be covered by the FOIA if it is held by the local authority on its own behalf or for its own work.

- Information sent by the councillor to the local authority will be held by the authority for its own purposes. For example, a councillor might write to the council in support of a resident. This information is held by the authority and is subject to the FOIA.
- Where the local authority provides administrative support (not just storage and office facilities), this may count as one of its purposes, and information held for this purpose may be covered by the FOIA.
- Whether information relates to the authority's own purposes does not depend solely on the legal status or functions of the authority. Relevant factors may include the amount of control the authority has over the information; whether the information is produced or used by the authority's staff; and whether the authority provides for these purposes out of its own budget.

Councillors should also be aware that it is against the law to delete / destroy any information after a request has been received.

Further information on the Act itself and the duty this Act imposes on local authorities can be found at: **Information Commissioner:** [www.ico.org.uk](http://www.ico.org.uk)