



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act Environmental Information Regulations

Information produced or received by councillors

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance is for local authorities of all sizes, including parish councils. It explains when information produced or held by elected members may be requested under the FOIA or the EIR.

Overview

- Individual councillors are not authorities for the purposes of the FOIA or the EIR.
- Information is subject to the FOIA if it is held by a public authority on its own behalf or is held by someone else on behalf of the authority.
- Environmental information is subject to the EIR if it is in the possession of a public authority which has created or received it, or if it is held by someone else on behalf of the authority.
- Correspondence between councillors or information held by a councillor for their own private, political or representative purposes will not usually be covered.
- Information received, created or held by a councillor on behalf of the local authority will be covered, for example, where a councillor is acting in an executive role as part of a council cabinet.
- Information created or received by a councillor but held on a local authority's computer system or at its premises will only be covered if it is held for the authority's own business.

What does the law say?

Section 3(2) of the FOIA outlines when information is held by a public authority for the purposes of the FOIA. Information is covered if it is held:

- by the authority, except solely on behalf of another person; or
- by another person on behalf of the authority.

Regulation 3(2) of the EIR states that information is held by a public authority if:

- it is in the authority's possession **and** has been produced or received by the authority; or
- it is held by another person on behalf of the authority.

Local authorities are public authorities for the purposes of the FOIA and the EIR, but individual elected members are not. Therefore, information held by councillors for their own purposes will not be covered by the FOIA or the EIR, but information they hold on behalf of or as part of the local authority will be covered.

Information created or received by a councillor but held on a local authority's premises or computer system will be covered if it is held by the authority on its own behalf. It will not be covered by the FOIA if it was produced by the councillor for private or political purposes and the authority is just providing storage, office space or computing facilities.

Environmental information held by the authority on behalf of a councillor may be covered by the EIR. This is covered in more detail in the final section of this guidance.

Elected members

The elected members of a council are likely to have a number of different roles. Some will relate to their function as elected members, and others will relate to the functions of the public authority.

Roles as elected members	Roles on behalf of local authority
<ul style="list-style-type: none"> • Corresponding with residents in their ward and seeking to resolve their problems. • Discussing council business with other councillors, for example, agreeing with other party members on how to vote. • Campaigning on behalf of a political party. 	<ul style="list-style-type: none"> • Being a cabinet member and having executive responsibility for a service area . • Carrying out administrative functions (particularly in small parish councils) such as producing minutes of meetings or updating websites. • Representing the authority, for example, on a regional forum.

Information produced or received by councillors may be held on their own computers or in their own homes or offices, or it may be held on local authority premises or computer systems. However, the purpose of the information and the capacity in which it is being held is more helpful when deciding whether information is covered by the FOIA.

Personal information held by a councillor in any of their official functions is covered by the Data Protection Act 1998 (DPA). For more advice, see our guidance [Advice for the elected and prospective members of local authorities](#).

Requests for information addressed to a councillor

Councillors are not public authorities in their own right. Therefore, they have no obligation to respond to a request for information addressed to them

individually. However, as a matter of good practice, a councillor should explain this to the requester and, with the permission of the requester, pass on to the local authority any requests for council information.

Information produced or received by a councillor as an elected member

Information produced or received by a councillor as an elected member is not covered by the FOIA.

- This includes correspondence with residents or with third parties on behalf of residents, and party political information.
- Correspondence between councillors is not generally covered by the FOIA, even where it relates to council business. Examples include discussing issues which affect the council and agreeing voting strategies with other members of the same group. This is a key part of the councillor's role as an elected representative and not something they do on behalf of the local authority.
- Correspondence relating to the management and administration of the council may however be subject to the FOIA. One example is where a member has the task of circulating an agenda for a committee meeting. This is more likely to happen in smaller councils without full-time administrative support.

A useful comparison can be drawn with Members of Parliament (MPs). MPs are not public authorities and correspondence between them is not covered by the FOIA. However, the FOIA does cover correspondence between ministers on departmental business, or information relating to the work of a select committee.

Information held by councillors for local authority purposes

Information is subject to the FOIA if it is held by someone in their role as an agent or representative of a public authority.

Example:

An NHS trust received a request for papers relating to the death of a patient and their inquest. Some of these papers were held by a firm of solicitors. The Tribunal accepted the principle that information was held on behalf of the Trust if it had been received or produced by the firm in its role as the client's agent. This would include correspondence with a third party on the client's behalf. Information relating to the firm's professional and financial activities, including the case working papers, were outside the scope of the FOIA. [Mrs B Francis v IC and South Essex Partnership Foundation NHS Trust](#) (EA/2007/0091; 21 July 2008)

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

- Parish councillors may send or receive letters on behalf of a parish council. This is because the council may not have any full-time staff or a postal or email address of its own.
- 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.
- Sometimes councils may nominate individuals to trustee or governor positions. In some cases, these people are council representatives and the information will be covered by the FOIA, but in other circumstances they may be expected to act independently. Council nominees to these positions should be made aware of the nature of their role and their legal obligations.

Information held by the local authority for its own purposes

Information is not covered by the FOIA simply because it is on a local authority's premises or in its computer or email system.

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.

You should have a policy on how elected members use council stationery, facilities and email addresses to ensure that information belonging to an individual councillor is clearly distinguished from local authority information.

However, 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 housing department in support of a resident who is facing eviction. 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.

Example:

The Privy Council Office (PCO) received a request for information relating to Baroness Amos, the official Visitor of the University of London. The PCO agreed that it had the information but said it was held only on behalf of the Visitor. The tribunal disagreed. It stated that this question does not turn on “who owns the information, nor on whether the PCO has exclusive rights to it, nor indeed on whether there is any statutory or other legal basis for the PCO to hold the information. Rather, the question of whether a public authority holds information on behalf of another is simply a question of fact.” The tribunal found that PCO staff routinely communicated with petitioners and assisted the Visitor in drafting decisions, and that this work was included in PCO budgets and business plans. Therefore it held the information on its own behalf. [Ennis McBride v IC and Ministry of Justice](#) (EA/2007/0105; 27 May 2008)

Environmental information

If the information being considered is environmental information, disclosure must be considered under the provisions of the EIR rather than the FOIA. For more information, see our guidance [What is environmental information?](#)

Environmental information must be considered for release if it is in the possession of the local authority which has created or received it, or if it is held by another on behalf of the authority.

- The EIR applies to any environmental information which is “held” under the FOIA. The EIR may also cover some information which is not covered by the FOIA.
- Information created or received by a councillor as a private individual or acting as an elected member will not be covered by the EIR, even if it is held on the local authority’s system. This is because it has been received or created by the councillor rather than the authority, and the authority does not have control over it.
- However, if the information is in the possession of the authority on behalf of someone else, this may be covered by the EIR. For example, if a councillor has deposited records with the authority for safe-keeping, any environmental information will be covered by the EIR.

Other considerations

More guidance is available if you need further information on:

- When information is “held” for the purposes of the FOIA
⇒ see [When is information caught by the Freedom of Information Act?](#)
- How the Data Protection Act 1998 applies to information received or created by councillors
⇒ see [Advice for the elected and prospective members of local authorities](#)

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 08456 30 60 60
01625 54 57 45

Email: please use the online [enquiry form](#) on our website

Website: www.ico.gov.uk