

Freedom of Information Act (FOIA) & Environmental Information Regulations (EIR) Policy

Illogan Parish Council

Date: January 2019

Freedom of Information Act

Freedom of Information Act 2000 (FOIA) & Environmental Information Regulations 2004 (EIR) Policy

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1. Introduction

This policy outlines Illogan Parish Council's approach to handling requests for information and adopting and maintaining a Publication Scheme, as required by the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR").

Purpose

To ensure that Illogan Parish Council ("the Council") adheres to the provisions of the FOIA and EIR by applying appropriate measures of compliance in the two main parts of the legislation:

- The requirement for the authority to develop and maintain a Publication Scheme (FOIA) and;
- The requirement for the authority to respond to any requests for information under FOIA & EIR.

Scope

This policy applies to all employees and Councillors, as well as other workers (including casual and agency workers, secondees and contractors) employed by the Council.

Policy Statement

The Council is committed to being open and transparent in providing access to information to the public. However, there may be occasions where unfortunately information cannot be released, such as in the case of commercially sensitive information or where data protection principles apply. Where exemptions apply, the Council will seek to rely on the appropriate FOIA or EIR Regulations.

Roles and Responsibilities

Overall responsibility for the Council's compliance with FOIA and EIR legislation lies with Parish Clerk/Governance Review Committee.

The Parish Clerk and/or the Chairman of the Council will exercise the Authority's function as "qualified person" under Section 36 of the FOIA.

The Parish Council will:

- maintain this policy and associated procedures and supporting documentation in relation to FOIA and EIR;
- maintain the Council's Publication Scheme;
- monitor and report on the processing of FOI and EIR requests within the Council
- monitor and report compliance with this policy to the Governance Review Committee; and

- arrange for appropriate learning, development and training to be carried out where appropriate.

It will be the responsibility of the Parish Clerk to:

- ensure ongoing compliance with the FOIA and EIR;
- arrange for FOI related activities to be carried out
- ensure that all staff and Councillors undertake FOI/EIR training as necessary;
- identify information and data which should be published as part of the Council's Publication Scheme;

It will be the responsibility of all staff and Councillors to:

- inform the parish clerk of existing information which should be published on the Council's Publication Scheme;
- collate and provide information in response to a request within the timelines required by the FOIA and EIR as directed by the Clerk;
- ensure that training is undertaken on FOIA and EIR where offered or provided,

2. Dealing with Freedom of Information (FOI) and Environmental Information Regulation (EIR) Requests

The Council is committed to dealing with requests within statutory guidelines; no more than 20 working days and more speedily where possible. This may be extended in specific circumstances, including when a Public Interest Test is engaged (FOI) or where the case is particularly large or complex (EIR).

Exemptions under FOI, or exceptions under EIR may be applied as appropriate, whilst maintaining and balancing the Council's commitment to openness, transparency, scrutiny and the public interest.

Any repeated requests or requests that place an unnecessarily large burden on the Council may be refused as vexatious or manifestly unreasonable, taking into account legislation and guidance.

A request in writing for information that the Council holds will be considered a FOI or EIR request unless the information is already in the public domain. The Council reserves the right to refuse requests where the cost of supplying the information would exceed the 'appropriate limit', currently 18 hours of officer time under FOI & which can also be used as a guide under the "manifestly unreasonable" exemption under EIR.

3. Adopting and Maintaining a Publication Scheme

The Council has adopted a Publication Scheme and is committed to updating and maintaining it, taking into account changes to and new legislation. The Publication Scheme contains documents, policies, plans and guidance used by

the Council. Most information is available on request and where any charges are applicable, these will be indicated.

4. Charging

The Council is committed to ensuring that information will be accessible to applicants, irrespective of ability to pay. Rather than routinely charging fees whenever the cost limit is exceeded, it is our policy to offer advice and assistance to help in submitting a new modified request, capable of being dealt with free of charge.

The Council will advise the applicant of any fee before the request is met and will take care to ensure that estimated fees are as accurate as possible to prevent over or under charging.

If the actual cost of answering the request turns out to be greater than the estimated amount charged, the additional cost will be borne by the Council. If lower, the Council will refund the excess amount where this amount is greater than £5. The Council will not charge VAT on requests for information.

Charging below the appropriate limit (FOIA)

The "appropriate limit" for FOI requests is 18 hours of officer time (or £450). This is based on legislation at £25 per hour. No charges to produce the request will be made for FOI requests taking under 18 hours (although disbursements may still apply).

Where applicable, the Council will charge applicants a fee (such as disbursements) in accordance with the fees regulations of the FOIA.

Charging below the appropriate limit (EIR)

For EIR requests, the "appropriate limit" will be considered as one of the potential determining factors when considering whether an EIR request is "manifestly unreasonable".

Guidance from the Information Commissioner's Office (ICO) and evolving case law has clarified instances when environmental information can be charged for, even where a request is not "manifestly unreasonable" under the EIRs. This is subject to a separate Illogan Parish Council Policy – "EIR Fees and Charges Policy".

Charging above the appropriate limit

FOIA – If in order to comply with a request, the appropriate limit would be exceeded, the Council will provide help and assistance to bring the request under the appropriate limit. If it is not possible to narrow down the request, the Council may charge the actual cost of complying with the request or issue a refusal notice under Section 12 of the FOIA. The Council will use its discretion on a case by case basis. The "appropriate limit" for

FOI requests is 18 hours (or £450). No charges to produce the request will be made for FOI requests taking under 18 hours (although disbursements may still apply).

EIR – The EIRs do not have a specific fee regulation in relation to time spent answering a request, so an appropriate limit does not apply when considering requests. However, under regulation 12(4)(b) “manifestly unreasonable” – the time frame in the associated legislation may be considered as a factor in determining that the request may be classed as “manifestly unreasonable”. Additionally, Regulation 12(4)(c), (the request is too general), may also be considered and applied. Where it is considered that these exceptions apply, help and assistance will be provided as far as reasonably possible, in order to comply with the request.

As highlighted earlier, even where a request under the EIR regulations is not classed as “manifestly unreasonable”, a charge may still apply for certain classes of environmental information.

5. Complaints relating to FOI & EIR requests

The Council will deal with any complaints relating to FOI/EIR responses under its Internal Review procedure. A request for an Internal Review must be made within 40 working days of receiving a response. The Council has 40 working days to deal with the request, but will endeavour to provide a response earlier than this wherever possible and within 20 working days in most cases. Where a requestor is still unhappy following an Internal Review, they have the right to refer the matter to the Information Commissioner’s Office (ICO) using the following details:

Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545700

Email: mail@ico.gov.uk

6. Review

The Parish Clerk will record requests and complaints in relation to the FOIA and EIR, as well as monitoring the timeliness and quality of responses. This information will be regularly reported to the Council’s Governance Review Committee, along with any recommendations for changes to policy and/or procedures.

The Publication Scheme will be reviewed annually, taking into account any new or evolving guidance issued by the Information Commissioner.

7. Contact

Parish Clerk
Illogan Parish Council
Unit 2, Wheal Agar
Tolvaddon Energy Park
Camborne
Cornwall
TR14 0HX

Email: enquiries@illoganparishcouncil.gov.uk
Tel: 01209 711433

Review Date:	Reviewed By:	Amendments