

Curbridge and Lew Parish Council GDPR Policy on Requests for Information

Curbridge and Lew Parish Council is subject to the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. It complies with the requirements of all this legislation.

From 25th May 2018 the General Data Protection Regulation 2016 will take effect ('GDPR'). A new Data Protection Act is also anticipated during 2018.

Many requests for information can be dealt with in the ordinary course of business and do not need to be processed under any of the above legislation. If the information can be provided immediately or can be made available routinely, then we will do this. Please check our website or noticeboard, to see first if the information is available before making any request. It is also worth looking at the Information Commissioner's website at www.ico.org.uk which has guidance for the public on making requests.

The contact details for making a request are: The Clerk, Curbridge and Lew Parish Council, 88 Well Lane, Curbridge, Oxfordshire OX29 7PA, or email curbridgepc@hotmail.co.uk

Data Protection Act 1998 (to be updated by the GDPR and the Data Protection Act 2018)

We will acknowledge receipt of a request for personal information as soon as possible. As long as the information is not subject to exemptions (or contains personal data relating to third parties) we will provide a written response within 30 calendar days.

Under the terms of the Data Protection Act, we will provide you with a statement or copies of data, as long as:

- it is "personal data" as defined by *Durant v Financial Services Authority* (2003) that is, truly personal, not merely incidental mention of a person, and within a structured, relevant filing system
- it is not exempt from disclosure
- we have been able to verify your identity
- you have not repeatedly requested the information in a short space of time

What is the purpose of the right of access under GDPR?

The GDPR clarifies that the reason for allowing individuals to access their personal data is so that they are aware of (and can verify the lawfulness of) the processing. It also allows them to check the accuracy of the data held and to challenge why it is necessary for the data to be held.

Is there a fee for dealing with a subject access request under GDPR?

No. A copy of the information will be provided free of charge. However, a 'reasonable fee' can be charged when a request is manifestly unfounded or excessive, particularly if it is repetitive.

A reasonable fee can also be charged to comply with requests for further copies of the same information. This does not mean that there can be charges for all subsequent access requests.

The fee will be based on the administrative cost of providing the information.

What is the timescale for responding to a request?

Under the GDPR the information should be provided without delay and at the latest within one month of receipt of the request.

The period of compliance can be extended by a further two months where requests are 'complex or numerous'. If this is the case, the individual will be informed within one month of the receipt of the request with an explanation as to why the extension is necessary.

What if the request is manifestly unfounded or excessive?

Where requests are manifestly unfounded or excessive, in particular because they are repetitive, we can:

- charge a reasonable fee taking into account the administrative costs of providing the information;
- refuse to respond.

Where we refuse to respond to a request, we will explain why to the individual, informing them of their right to complain to the supervisory authority and to a judicial remedy without undue delay and at the latest within one month.

How will the information be provided?

We will verify the identity of the person making the request using 'reasonable means'.

If the request is made electronically, we will endeavour to provide the information in a commonly used electronic format.

The GDPR introduces a new best practice recommendation that, where possible, organisations should be able to provide remote access to a secure self-service system which provide the individual with direct access to his or her information. This is not appropriate for all organisations and we do not yet have this type of facility. The right to obtain a copy of information, or to access personal data through a remotely accessed secure system, must not adversely affect the rights and freedoms of others.

What about requests for large amounts of personal data?

The GDPR permits us to ask the individual to specify the information the request relates to.

The GDPR does not introduce an exemption for requests that relate to large amounts of data, but we can consider whether this makes the request manifestly unfounded or excessive.

Freedom of Information Act 2000 (“FOI”)

Timescales and ways of making requests We will respond to an FOI request in 20 working days counting the first working day after the request is received as the first working day. An FOI request can be made by anyone, from anywhere, for any purpose. It must be in writing and there must be a return address to send the information to. We will confirm or deny whether we hold the information within the 20 days. If we do not hold the information we will explain why not. We will let you know if we need longer than 20 days to apply the public interest test and we will tell you at that point what exemptions we are looking at and how long we think we need. If we do need more time to apply the public interest test this will be up to a maximum of a further 20 working days so the total time will be a maximum of 40 working days.

Refusal We may refuse a request if we consider that:

- it is vexatious (designed to cause disruption or annoyance rather than having a serious purpose, see below)
- to comply would exceed the statutory cost limit (£450 with staff time charged at £25 an hour which is the statutory rate). If we believe it will exceed the cost limit we will issue a refusal notice and invite the applicant, if possible, to revise the request to make it less expensive.
- it falls within an exemption under the legislation (see below)

Charging We can charge for photocopying and disbursements and can request these fees in advance by issuing a fees notice within twenty working days of receipt of the request. When the fees notice is issued the time limit for responding stops. If we do not receive the fee within three months we are not obliged to comply with the request.

Clarification We can seek clarification about what is being requested. The time limit for responding stops whilst we wait for a response to our request for clarification.

Exemptions The most common exemptions are:

Section 21 – information reasonably accessible to the applicant by other means. There is a duty to confirm or deny whether we hold it and to tell the requestor where they can find it. This is an absolute exemption which means the public interest test does not need to be applied, (see below).

Section 22 – information intended for future publication. This means it is in draft, still being worked on but when completed, or approved, it will be published. The public interest test must be applied here.

Section 31 – prejudicial to law enforcement (preventing crime, collecting tax)

Section 36 – prejudicial to the effective conduct of public affairs

Section 40 – personal data

Section 42 – legal professional privilege

Section 43 - commercial sensitivity

All except section 21 are qualified exemptions requiring the application of the public interest test. This means weighing up whether the public interest is best served by disclosing the information, or not disclosing it.

Environmental Information Regulations 2004 (“EIR”)

Environmental information broadly relates to:

Air, atmosphere, water, soil, land, landscape, plants, animals, biological diversity and genetically modified organisms

- Emissions, discharges, noise, energy, radiation, waste, recycling, and pollution
- Measures and activities such as policies, plans and agreements
- Reports, cost benefit analysis and economic analysis
- The state of human health and safety, contamination of the food chain
- Cultural sites and built structures (the effect of the environment on the human world)
- Planning and development, building control, construction and renovation, floods and flooding issues, land use, traffic, parking, location of mobile phone masts and demolition of buildings

It covers documents, photos or maps. There is no distinction between formal approved documents, and anything else. The duty is to make the information available. This is not the same as the duty to disclose under FOI.

There are 20 working days to respond to the request. Unlike FOI there is no extension to the time limit for consideration of the public interest test. A further 20 days is permitted though if the request is complex, or there is a large amount of information involved. There is no right to charge for inspection. Cost recovery is permitted with reasonable charges published in advance.

Exceptions There are exceptions to the requirement to disclose, these exceptions are subject to the public interest test like FOI. The exceptions are:

- personal data
- information not held when the request was made
- the request is manifestly unreasonable (similar to “vexatious” under FOI but with “manifestly unreasonable” used instead. The courts have treated both in the same way)
- the request is too general
- information is in draft or is unfinished
- information is an internal communication

- disclosure would adversely affect the course of justice or commercial confidentiality.

There is a lot of guidance, and case law, on the use of both FOI exemptions and EIR exceptions which can be found on the Information Commissioner's website at www.ico.org.uk.

Publication Schemes This is a scheme available via the website, setting out the classes of information that will be made routinely available and any charges. This includes policies and procedures, minutes of meetings, annual reports and financial information. This information is easily and quickly available.

Internal Review If you are unhappy with the way your request has been dealt with you may request an internal review. This will be carried out within 20 working days of the request for a review being received. If you remain unhappy with the result of the review you can ask the Information Commissioner to look at your concerns. We will provide you with details of the internal review process when you request it. The process will vary depending on the type of request and who is available to review the process within the timescales.

Vexatious Requests Whilst Curbridge and Lew Parish Council wishes to be open and transparent and to provide as much information as possible about the work it does there are occasions when it might be necessary to decide that a request is "vexatious" within the meaning of the legislation. There have been a number of legal cases which have helped to clarify what is meant, legally, by "vexatious" and which have stated that parish councils have limited resources and that their obligations under the legislation must be proportionate to those resources.

Public authorities do not have to comply with vexatious requests. There is no requirement to carry out a public interest test or to confirm or deny whether the requested information is held.

The key question is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. There is no exhaustive list of circumstances. Every case is unique and judged within the context and history of that specific situation.

"Vexatious" Indicators

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent/overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- No obvious intent to obtain information

- Futile requests

Process we will follow to determine if a request is vexatious

The Parish Clerk deals with all requests for information on behalf of the Parish Council. If a request is considered to be potentially vexatious the Clerk will prepare a summary setting out the context and history to the request. This summary will be reviewed by the Parish Council.

The review

The following will be considered:

- The purpose and value of the request
- Whether the purpose and value justifies the impact on the public authority
- The context and history so, for example, if there has been a long and frequent series of requests the most recent request, though not obviously vexatious in itself, will contribute to the aggregated burden.
- Have there been numerous follow-up enquiries no matter what is supplied? This will be balanced against how clear our responses have been, has contradictory or inconsistent information been supplied or is a legitimate grievance being pursued?
- Whether there are alternatives to the vexatious route. If it is too expensive then section 12 (costs in excess of £450) will be used. The Information Commissioner permits the total costs for all requests from one person (or several acting in concert) to be aggregated during a period of sixty days so long as they are requests for similar information.
- Is this a round robin, a “fishing” expedition or part of an orchestrated campaign? None of these make it vexatious but are factors.

Final Warning

If, having considered all of the above, the Parish Council thinks there is a case for treating the request as vexatious then consideration will be given to a “final warning”. This is a letter, or email, to the person making the request explaining the impact the request(s) are having and asking that their behaviour be moderated. This “final” warning will not be appropriate in all cases but, if it is possible that the person making the request has not appreciated the impact of what they are doing, then it may assist.

Advice and Assistance

In addition, the Parish Council may want to ask the person making the request whether advice and assistance would help in clarifying what exactly they wish the organisation to provide. Again, this may not be appropriate in every circumstance but will be considered.

Report to the Parish Council

The history of the matter will go forward as part of a report to the Parish Council setting out the evidence and reasoning behind the recommendation to propose that the request be treated as vexatious.

The decision to declare a request vexatious will be taken by the Parish Council. This decision should be taken within 20 working days of receipt of the request. This time limit should be achievable in normal circumstances, however, if there is no meeting scheduled within that timescale then the decision will be formally delegated by the adoption of this policy to the chairman of the Council [in consultation with the vice chairman]. In a small parish it is not possible for there to be an internal review process once the Parish Council has reached the decision that the request is vexatious.

Under section 14(1) of the Freedom of Information Act the refusal notice will set out our internal review procedure (if one is available) and the right of appeal to the Information Commissioner's Office. However, under section 17(6) if the authority has issued a previous refusal notice for a vexatious request (and it would be unreasonable to provide another one) it is not necessary to do so. This will be done where the complainant has already been warned that further requests on the same, or similar topics, will not receive any response.

Please note that if a request is found to be vexatious and further requests are received on the same topic no response will be provided.

Review of Policy This information policy is part of the Council's governance structure and will be reviewed as necessary when legislation (or legal cases) means it needs to be updated.

Curbridge and Lew Parish Council
May 2020