

Freedom of Information Policy

Document Control

Responsible Dept	Performance & Engagement	Author / Reviewer	Independent Review Manager
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1. Policy Statement

- 1.1 Staffordshire Commissioner's Office will use all appropriate and necessary means to ensure that it complies with the legislation and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Freedom of Information Act (FOI).

2. Introduction

2.1 Background

- 2.1.1 The FOI Act 2000 gives a general right of access to all types of recorded information held by the Staffordshire Commissioner's Office, sets out exemptions from that right and places a number of obligations on the Staffordshire Commissioner's Office. Any person who makes a request to the Staffordshire Commissioner's Office for information will be informed whether the information is held, and, subject to exemptions, be supplied with that information.

2.2 The FOI Act

- 2.2.1 The main features of the FOI Act are:

- a general right of access to information held by public authorities,
- sets out exemptions from the duty to provide information,
- places a requirement on public authorities to exercise discretion; they may have to determine not only whether an exemption applies but also the extent to which it may apply,
- makes arrangements in respect of costs and fees,

- places a duty on public authorities to adopt publication schemes,
- stipulates public authorities must make arrangements for enforcement and appeal,
- places a duty to provide advice and assistance to people who wish to make, or have made requests for information,
- outlines Codes of Practice.

2.2.2 The FOI legislation applies to all information held by public authorities regardless of its date. It does not oblige public authorities to retain information which is no longer useful to the authority.

2.2.3 The FOI Act is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and if needed, initiate court proceedings to ensure compliance.

2.2.4 In the context of FOI, 'information' is defined as each item of material held by the Staffordshire Commissioner's Office in paper or electronic form. This includes but is not limited to, all draft documents, agendas, minutes, emails, diaries, and all other recorded information.

3. Scope

3.1 All staff working in or on behalf of the Staffordshire Commissioner's Office are within the scope of this policy, (this includes contractors, temporary staff, secondees and all permanent employees).

4. Roles and Responsibilities

4.1 Organisational Responsibility

4.1.1 The Staffordshire Commissioner's Office will:

- Ensure that there is always one person with overall operational responsibility for FOI available within standard business hours. Overall responsibility for this policy rests with the Chief Executive,
- Publish and maintain a Publication Scheme,
- Provide relevant FOI training for all staff with FOI responsibilities,
- Provide clear lines of reporting and supervision for compliance with FOI,
- Develop and maintain clear procedures for recognising and responding to requests for information under FOI in a timely manner to meet the requirement to respond within 20 working days.

4.2 Corporate Responsibilities

4.2.1 The Independent Review Manager is responsible for overseeing the implementation of this Policy and will establish systems, procedures and operational processes to support this function as necessary.

4.2.2 The Data Protection Officer is responsible for undertaking internal reviews of the FOI decision maker. If the Data Protection Officer has been involved in the original request, the internal review function will be undertaken by the Chief Executive or a representative. Alternatively, the applicant may be directed straight to the Information Commissioner.

4.2.3 The FOI Act makes it an offence to alter, deface, block, erase, destroy or conceal any information from disclosure which is held by the Staffordshire Commissioner's Office.

4.3 Employee Responsibilities

4.3.1 Penalties can be imposed upon the Staffordshire Commissioner's Office and its staff for breaching the FOI Act.

4.3.2 All employees have a legal duty to preserve formal records. Employees must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices are not offences in themselves, however they may lead to an inability to comply with requirements of the FOI Act.

4.3.3 New starters will undergo an induction training programme including how to recognise and comply with FOI and Environmental Information Regulation requests.

4.3.4 All employees will, through appropriate training and responsible management:

- Observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records,
- The Staffordshire Commissioner's Office Senior Information Risk Owner (SIRO) will be trained to fulfil their information risk management role,
- Provide the National FOI Team with full and appropriate responses to FOI requests within the timescales outlined by the FOI team,
- Be aware that ultimately the general public may have access to any piece of information held within the Staffordshire Commissioner's Office and must pay due regard to how they record information,
- On receipt of an FOI request, which does not need to specify that it is a 'Freedom of Information' request, immediately notify the SCO FOI Team. This can be done by forwarding correspondence to foi.pfcc@staffordshire-pfcc.gov.uk
- Understand that breaches of this Policy may result in disciplinary action, including dismissal.

5. Managing Requests for Information

5.1 It is the responsibility of the Independent Review Manager to ensure that the SCO has efficient processes to support the FOI agenda and assure that all requests are managed correctly.

5.2 The Staffordshire Commissioner's Office has existing processes for providing information to members of the public and other persons which are not superseded by this policy. Requests for information generated as part of the Staffordshire Commissioner's Office existing processes may be answered as 'business as usual' if it

is deemed reasonable to do so.

- 5.3 Each department of the Staffordshire Commissioner's Office may be required to nominate an FOI representative to liaise with the FOI Team in the provision of information as required.
- 5.4 Final draft responses to FOI requests must be approved for issue by the FOI Decision Maker or a member of staff with delegated authority.
- 5.5 Amendments to draft responses may only be made by a member of staff with delegated FOI authority.
- 5.6 All requests will be logged by the FOI Decision Maker to keep a record of how requests have been handled, and monitor their progress.

5.7 **Defining a Valid FOI Request**

- 5.7.1 As defined in Section 8 of the FOI Act, to meet all the requirements of a valid FOI request, a request must:

- be in writing (submitted by letter or electronic form, including those sent via social media), the request does not have to mention the Act directly, or be the sole theme of the requester's correspondence,
- state the name of the applicant and a valid address for correspondence (e-mail address is valid),
- describe the information requested.

- 5.7.2 A request also becomes valid when:

- The FOI Act is mentioned in correspondence,
- When information cannot be supplied under another legislative access regime or Business as Usual (BAU) criteria within 20 working days.

5.8 **Time Limits for Compliance with Requests**

- 5.8.1 The Staffordshire Commissioner's Office has systems and procedures to ensure that it complies with the duty to confirm or deny whether it holds requested information, and to provide a response to requests within the statutory timeframe of twenty working days from the point of a valid request being received.
- 5.8.2 The Staffordshire Commissioner's Office may choose to apply an exemption to any information, to refuse a request if it is vexatious or repeated, or exceeds the appropriate limit for costs of compliance. A formal refusal notice must be issued within twenty working days informing the applicant of this decision.

5.9 **Means by which information will be conveyed**

- 5.9.1 An applicant, on making their request for information can express a preference for communication by any one or more of the following means;

- the provision to the applicant of a copy of the information in permanent form or in another form deemed to be acceptable by the applicant,
- the provision to the applicant of a reasonable opportunity to inspect the record containing the information, and
- the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

5.9.2 In determining whether it is reasonably practicable to communicate information by a particular means, the Staffordshire Commissioner's Office will consider all the circumstances, including the cost of doing so. If it is determined that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the applicant will be notified of the reasons for its determination and will provide the information by such means as which it deems reasonable in the circumstances.

5.10 Refusal of Requests

5.10.1 The duty on the Staffordshire Commissioner's Office to confirm or deny whether information is or is not held, does not arise if:

- an exemption applies under section 2 of the Act,
- a fees notice has been issued and the fee has not been paid,
- an estimate demonstrates that the cost of compliance will exceed the appropriate limit,
- it can be demonstrated that the request is repeated or vexatious.

5.10.2 Upon refusal of a request for information, the applicant will be informed of the reasons for this decision within twenty working days, and at the same time, will be informed of the procedures for making a complaint about the discharge of the duties of the Staffordshire Commissioner's Office and their rights in relation to FOI.

5.10.3 If the Staffordshire Commissioner's Office is reliant upon an exemption under part 2 of the Act, relating to the duty to confirm or deny, a notice will be issued within twenty working days, which will state that fact and specify the exemption being applied and why it applies.

5.11 Redaction of Information

5.11.1 Redaction is a process which is carried out to make information unreadable or to remove exempt information from a document. This is achieved by blocking out individual words, sentences or paragraphs or by removing whole pages or sections of information prior to the release of the document.

However, if so much information is deemed to be exempt and the document becomes illegible the entire document should be withheld.

5.11.2 When responding to an FOI the Staffordshire Commissioner's Office will ensure the applicant is informed of the exemption applied to the redacted information. This will be done for every exemption where there are multiple.

5.11.3 All redactions must be carried out by the Information Asset Owner of the requested

information.

- 5.11.4 An unredacted copy of the requested information must be provided to the FOI team as well as the redacted copy.

5.12 Internal Review

- 5.12.1 Applicants may ask the Staffordshire Commissioner's Office to conduct an Internal Review of its handling of their FOI request. Internal Reviews consider decisions made, rationale, public interest, timeliness and all other relevant aspects of the request.
- 5.12.2 The Data Protection Officer will communicate with all staff that were involved in the original request and invite them to review the handling of the request.
- 5.12.3 The Staffordshire Commissioner's Office will conduct Internal Reviews within 20 working days or 40 working days where a review is shown to be particularly complex.
- 5.12.4 Applicants who may remain unsatisfied with the outcome of an Internal Review will be advised that they may exercise their right to appeal to the Information Commissioner, and subsequently to an Information Tribunal.

5.13 Datasets

- 5.13.1 Clause 92 of the Protection of Freedoms Bill amends the FOI Act meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use, and where reasonably practicable, published in a reusable format.

5.14 Environmental Information Regulations

- 5.14.1 Requests for information to the Staffordshire Commissioner's Office which relate to the environment will be processed in accordance with the Environmental Information Regulations 2004. This includes, but is not restricted to, all information about the impact on the elements and measures that might affect the environment. This applies to information in all formats which is held by the Staffordshire Commissioner's Office.

5.15 Requests relating to potential media interest

- 5.15.1 The Staffordshire Commissioner's Office will not distort its process or compile a response to an FOI request differently if it is felt that the response will prompt media interest. The Staffordshire Commissioner's Office Communications Team will be sighted on the response to be aware of the media interest in the topic.

5.16 Formal Complaints

- 5.16.1 All formal complaints received via the Staffordshire Commissioner's Office complaints process about the discharge of the duties of the Staffordshire Commissioner's Office under the FOI Act will be responded to by the Data Protection Officer, who will liaise with the Independent Review Manager and SIRO regarding any complaint received.

5.17 The Role of the Information Commissioner

5.17.1 The Information Commissioner Office (ICO) is an independent public authority which upholds Information Rights in the UK. Applicants who are not satisfied with the outcome of their FOI request may ask the ICO to review how the Staffordshire Commissioner's Office has performed in response to the complainant's request.

6. Duty to Provide Advice and Assistance

6.1. The Staffordshire Commissioner's Office has a duty to provide advice and assistance to persons making FOI Requests in line with Section 16 of the FOI Act and the Section 45 Code of Practice. The Staffordshire Commissioner's Office will endeavour to undertake all steps it deems to be reasonable to achieve this.

6.2 Identity of the applicant and reasons for the request

6.2.1 The FOI Act does not mandate that the identity of an applicant must be disregarded. The ICO has advised however, as the Act enables disclosure of information on grounds of public interest, responses to requests ought to be made "applicant and motive blind". On this basis, the Staffordshire Commissioner's Office will assess all requests on the understanding that applicant identity is not a relevant consideration when managing requests.

6.2.2 Possible exceptions to applicant identity being considered by the Staffordshire Commissioner's Office may include, but are not limited to:

- A request being deemed to be repeated,
- The applicant having made a request for their own personal data,
- Prejudice being caused by releasing the information either to the requester or to any other person (prejudice-based exemptions only),
- Situations where the Staffordshire Commissioner's Office is confident that the identity of the applicant means the requested information is reasonably accessible to that person by other means, and is therefore exempt by way of Section 21 of the Act,
- If disclosure of third-party personal data would be contrary to Data Protection principles and/or regulations to release the information to the general public.

7. Transferring Requests for Information

7.1 In most cases where the Staffordshire Commissioner's Office does not hold the information but thinks that another public authority does, it will respond to the applicant to inform them accordingly. The Staffordshire Commissioner's Office will request permission to transfer the request or will provide the contact details for the public authority they believe hold the requested information.

7.2 Consultation with Third Parties

7.2.1 The Staffordshire Commissioner's Office recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where the information is subject to the common law duty of confidence or where it constitutes Personal Data as defined by the Data Protection

Act 1998. Unless an exemption applies in relation to any particular information, the Staffordshire Commissioner's Office will be obliged to disclose the information in response to a request.

- 7.2.2 Where disclosure of information cannot be made without the consent of a third party and would constitute an actionable breach of confidence such that an exemption would apply, the Staffordshire Commissioner's Office will consult that third party with a view to seeking their consent, unless such consultation is not practicable.
- 7.2.3 The Staffordshire Commissioner's Office will undertake consultation where the views of the third party may assist in determining whether an exemption under the Act applies, or where the Public Interest lies.
- 7.2.4 The Staffordshire Commissioner's Office may consider that third party consultation is not appropriate where the cost or amount of time and/or effort involved would be disproportionate. It will consider the most reasonable course of action to take in light of the requirements of the FOI Act. Consultation will be unnecessary where the Staffordshire Commissioner's Office does not intend to disclose the information or the view of the third party can have no effect on the decision whether to disclose the requested information.
- 7.2.5 Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative, the Staffordshire Commissioner's Office will, if it considers consultation appropriate, consider whether it would be sufficient to consult only some of the organisations.
- 7.2.6 If a third party does not respond to consultation it does not relieve the Staffordshire Commissioner's Office of its duty to disclose information under the FOI Act, or its duty to reply within the time specified. In all cases, it is for the Staffordshire Commissioner's Office, not the third party, to determine whether or not information should be disclosed. A refusal to consent to disclosure by a third party does not automatically mean information will be withheld.
- 7.2.7 If the third party is a national partner agency, consultation can be undertaken on the SIROs behalf by the National Police Freedom of Information and Data Protection Unit.

7.3 Accepting Information in Confidence from Third Parties

- 7.3.1 The Staffordshire Commissioner's Office will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions and it would not be otherwise provided.
- 7.3.2 The Staffordshire Commissioner's Office will not agree to hold information 'in confidence' which is not in fact confidential in nature.

7.4 Staff Names and Details

- 7.4.1 It is acknowledged that as a public authority, some justification exists for the

disclosure of employee names and contact details.

- 7.4.2 The Staffordshire Commissioner's Office will release the names of Board members, Directors and all staff at a 'Very Senior Manager' pay grade upon request, unless a valid exemption applies. Names and details of staff published on the Staffordshire Commissioner's Office website will also be provided without gaining additional consent.
- 7.4.3 Consent will be sought from all other staff to release their information where it is reasonably practicable to do so. The Independent Review Manager will decide when it may or may not be reasonably practicable to obtain consent.
- 7.4.4 Requests for salary information will be answered, if applicable, by providing Police Staff pay bands. Where a person falls outside of Police Staff pay bands, their salary will be given in £5,000 bands. Requestors will be referred to the website if requesting information regarding salaries above £58'200.

8. Exceptions and the Public Interest Test

- 8.1 The Staffordshire Commissioner's Office will consistently encourage the release of recorded information to the public. Sometimes it is not appropriate or practicable for recorded information held by the Staffordshire Commissioner's Office to be disclosed and there are 23 exemptions (See Appendix A) under the FOI Act which may be applied to withhold information from disclosure. There are two types of Exemption: Absolute and Qualified.
- 8.2 The Public Interest Test is set out in section 2 of the FOI Act. It provides that, even where the information meets the requirements of a qualified exemption, the information may only be withheld where, "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".
- 8.3 The strength of the factors both in favour of disclosure and maintaining the exemption will be assessed on a case-by-case basis, conducted by appropriately trained staff.
- 8.4 Section 36 of the FOI Act enables information to be made exempt if its disclosure may inhibit the ability of an authority to conduct its business effectively.
- 8.5 Reliance upon a Section 36 exemption requires the approval of the SIRO, following a recommendation from the FOI Team.

9. Public Sector Contacts

- 9.1 The Staffordshire Commissioner's Office will, when entering into contracts, refuse to include contractual terms which attempt to restrict the disclosure of information it holds relating to the contract beyond the restrictions permitted by the FOI Act.

10. Re-use of Information

- 10.1 Regulations apply in respect of the “re-use” of information where the Staffordshire Commissioner’s Office holds the intellectual property/copyright of information and where re-use has been requested by a body that is not a public authority.
- 10.2 The regulations around re-use require organisations to publish details of information available for re-use. Information that Staffordshire Commissioner’s Office publishes as part of its Publication Scheme can be considered as the list of information available for re-use. Any published document can be re-used without charge, provided the Staffordshire Commissioner’s Office is quoted as the source and retains copyright.
- 10.3 Requests for re-use will be granted or denied by the Independent Review Manager.

11. Fees and re-use charge

- 11.1 Staffordshire Commissioner’s Office is able to charge a fee for dealing with a request, in line with “The FOI and Data Protection (Appropriate Limit and Fees) Regulations 2004”.
- 11.2 In line with these regulations, when determining whether the cost of the work to respond is estimated to be less than £450, Staffordshire Commissioner’s Office is not able to charge a fee. Where the cost exceeds this amount, the Staffordshire Commissioner’s Office will correspond with the applicant either to reduce the requirement (and therefore cost) to below the threshold or agree a fee. If an agreement cannot be reached we may exempt the requested information from disclosure.

12. Publication Scheme

- 12.1 The FOI Act makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner.
- 12.2 The Staffordshire Commissioner’s Office Publication Scheme is divided into 6 sections:
- Who we are and what we do,
 - What we spend and how we spend it,
 - What our priorities are and how we are doing,
 - How we make decisions,
 - Our policies and procedures,
 - List and registers,
- 12.3 The Publication Scheme of can be found on our website www.staffordshire-pfcc.gov.uk.
- 12.4 **Disclosure Log**
- 12.4.1 In addition to updating its Publication Scheme, Staffordshire Commissioner’s Office will maintain an online disclosure log that identifies and records the requests received, how they have been handled, and the responses given.

12.4.2 A disclosure log lists responses to requests made to us under the FOI Act and Environmental Information Regulation which are felt to be of wider public interest.

12.4.3 Staffordshire Commissioner's Office will not publish any requests from an applicant for information in relation to their personal data.

13. Monitoring

13.1 Compliance with this Policy will be monitored by the Staffordshire Commissioner's Office Information Assurance Board in consultation with the Independent Review Manager. Independent reviews and dip samples may be considered for external scrutiny by the Ethics, Transparency, and Audit Panel (ETAP).

13.2 The Independent Review Manager is responsible for the revision and updating of this document.

Appendix A – Exempt Information under Part 2 of the Act – The Exemptions

There are two types of class exemption identified within the FOI Act 2000:

- (a) Absolute – which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) Qualified – by the public interest test, which require the public body to decide whether it is in the balance or public interest to not disclose information.

With the exception of section 21 (information available by other means) exemptions apply not only to the communication of information, but also to the duty to confirm or deny, if that itself would disclose information that is reasonable to withhold.

Absolute Exemptions:

Section 21 - Information accessible to the applicant by other means

Information which is already in the public domain, such as that published in the Publication Scheme.

Section 23 - Information supplied by, or relating to, bodies dealing with security matters

This applies only to information supplied by or relating to security bodies.

Section 32 - Court Records

Information that is only held as part of the documentation for a court, tribunal case or a statutory inquiry.

Section 34 - Parliamentary Privilege

Where disclosure would infringe the privileges of either House of Parliament.

Section 40 - Personal Information

Information which is personal to the person making the request.

Section 41 - Information provided in confidence

An “actionable” breach of confidence where disclosure would constitute a breach of confidence which would lead to legal action being taken.

Section 44 - Legal Prohibitions on Disclosure

Where disclosure of information is prohibited by any other law or regulation, or if it would be a contempt of court.

Qualified Exemptions:

Section 22 - Information intended for future publication

Where publication was planned at the time the request was made, for example, an annual report, or the results of an investigation. Applicants will be advised when the information will be published and how it can be obtained.

Section 24 - National Security

Information that is not covered by Section 23 under the Absolute Exemption category above, but exemption is needed to safeguard national security. This requires a certificate signed by a Minister of the Crown.

Section 26 - Defence

Information likely to prejudice national defence or the activities or our armed forces, or those of allies.

Section 27 - International Relations

Information likely to prejudice the United Kingdom's international relations or interests, for example, information obtained in confidence from another State or international court.

Section 28 - Relations within the United Kingdom

Information likely to prejudice relations between the United Kingdom Government, Wales, Scotland or Northern Ireland.

Section 29 - The economy

Information likely to prejudice the economic interests of the United Kingdom or part of the United Kingdom, or the financial interests of the government.

Section 30 - Investigations and proceedings conducted by public authorities

Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.

Section 31 - Law enforcement

Information not covered by Section 30 above, and which is likely to prejudice a wider range of investigative activities.

Section 33 - Audit

Applies to information held by public authorities which have functions relating to audit (for example, the National Audit Office), or which examine the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions.

Section 35 - Formulation of Government Policy

Information held by a government department or the National Assembly for Wales, relating to the creation of government policy.

Section 36 - Prejudice to the effective conduct of public affairs

Information that may inhibit the ability of the authority to conduct its business effectively should that information be made freely available in the public domain - Use of this exemption requires sign off from the Chief Executive in receipt of a recommendation to do so by a National Director.

Section 37 - Communication with His Majesty etc. and honours

This applies to information that relates to communications with His Majesty, members of the Royal family or Royal household, or the conferring of honours, for example, recommendations for individuals to receive an honour in the New Year's Honours List.

Section 38 - Health and Safety

Information that would, or would be likely to, endanger the physical health, mental health or safety of an individual.

Section 39 - Environmental Information

Exempted under FOI but the request will be dealt with in accordance with the Environmental Information Regulations.

Section 40 - Personal information about a third party

Information which is personal to the applicant or someone other than the person making the request.

Section 42 - Legal Professional Privilege

This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings, for example advice provided by a lawyer to his client, or information relating to ongoing legal proceedings.

Section 43 - Commercial Interests

Such as trade secrets, and to information which if disclosed could harm/prejudice the commercial interests of any person, including the authority holding it.