

Freedom of Information Act - Exemptions guidance

The purpose of this document

This document describes how the Bury Parish Council may apply the procedural restrictions and exemptions of the Freedom of Information Act (FOI) in relation to certain types of information. This policy is guidance only. It is not a definitive directive that should be followed in every particular instance. While it may be used to flag possible procedural restrictions and exemptions, all information subject to an FOI request must be assessed in the relevant context taking account of all relevant circumstances.

It is important that this policy is a “living” document and will change as precedent is set through cases before the information commissioner and the courts. Council members must always consult the web version as and when they need to see this policy. Information can also be obtained by contacting the Freedom of Information Coordinator.

Procedural restrictions and exemptions

For the remainder of this document the term ‘We’ will be known as ‘Bury Parish Council.’

Procedural restrictions

1. Excessive costs

If the cost of complying with a request for information exceeds £450, We are not obliged to comply with a request. In estimating the cost of complying with a request, we can include any expenses Bury Parish Council incur in accessing the information, for example, the cost of hiring a special machine to read certain data. Further, We are entitled to include the time taken to comply with the request at £25 per hour, but only for the following tasks

- time to determine whether we hold the information
- time to locate the information, or a document which may contain the information
- time to retrieve the information, or a document which may contain the information and

- time to extract the information from a document containing it

We are expected to be reasonable in estimating time to comply with a request.

2. Vexatious and repeated requests

We are not obliged to comply with a request for information if the request is vexatious. This section is based on advice provided to us by the Information Commissioner.

A vexatious request is one which is designed principally to subject a public authority to inconvenience, harassment and expense rather than to obtain information.

There is no such thing as a vexatious requester, only a vexatious request. Each request must be looked at in isolation when deciding whether the application is vexatious. This is regardless of how many applications for information have been previously submitted by the applicant.

Where a public authority has previously complied with a request for information which was made by a person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Exemptions

There are two types of exemptions under the FOI Act – absolute and non-absolute. As the name suggests, an absolute exemption means that the Bury Parish Council need not consider any further issues in deciding whether the information should be disclosed. Information can only be withheld under a non-absolute exemption if it is considered that the public interest in withholding the information outweighs the public interest in the information being disclosed.

This section does not discuss all the exemptions under the FOI Act but looks at those exemptions that may apply to Bury Parish Council's information.

1. Section 21 - The information is accessible to applicant by other means (an absolute exemption)

If information is available by alternative and reasonably accessible means, the applicant should be advised how it can be obtained. For example, the information may be easily accessible from our website.

2. Section 22 – Information intended for future publication (a non-absolute exemption)

This includes information that we intend to publish in the future. However, this exemption will not apply if we formed the intention to publish the information after the application was received. This exemption might apply to statistics published at regular intervals or where information is incomplete and it would be inappropriate to publish it before it is completed. As this is a non-absolute exemption, we must go on to consider the public interest. We will ask ourselves – “Is it reasonable to wait until the intended publication date?”

3. Section 31 – Law enforcement (a non-absolute exemption)

Information is exempt if its disclosure would, or would be likely to, prejudice among other things –

- the prevention or detection of a crime
- the apprehension or prosecution of offenders
- the administration of justice
- any civil proceedings which are brought by or on behalf of the Bury Parish Council for any of the purposes specified in section 31.

This exemption would be relevant, for example, where we are conducting internal investigations in relation to a suspected fraud allegedly committed by a funded body. Releasing certain documents which shed light on the detail of the fraud, may prejudice our ability to conduct a thorough and effective investigation.

4. Section 32 – Court records (an absolute exemption)

Generally, court documents, arbitration documents and inquiry documents that we hold will be exempt from disclosure under FOI. Applicants for this information can be directed to the relevant court in most cases.

5. Section 36 – Prejudice to the effective conduct of public affairs (a non- absolute exemption)

This exemption will apply if, in the reasonable opinion of our Chairman, disclosure of the information would, or would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation or would otherwise prejudice, or would be likely to, prejudice the effective conduct of public affairs. This means that in some instances our Chairman will be consulted to make a final decision on whether information should be disclosed or withheld.

6. Section 38 - Health and Safety public affairs (a non- absolute exemption)

Information is exempt under this section if its disclosure would, or would be likely to, endanger the physical or mental health of any individual or endanger the safety of any individual. This exemption is not likely to apply in many instances to information held by the Bury Parish Council. One example might be where a person requesting information had physically threatened certain Bury Parish Council staff. If that person had requested details of the future movements of particular officers in the course their work for the Bury Parish Council, the information would probably be exempt under this section. Quite possibly the information may also be exempt under the personal information exemption.

7. Section 40 – Personal information (an absolute exemption)

Where an applicant attempts to obtain access to their own personal information under the FOI Act, the application should be refused. The applicant should be advised to make their request for information under the Data Protection Act 1998. However, if we are satisfied as to the applicant's identity, then we may decide to treat the applicant's request as a request under the Data Protection Act and process it accordingly.

Where an applicant is trying to obtain personal information of another person, they can do so under the FOI Act but only if there is no infringement of the data protection principles.

Information on the Data Protection Act can be found at www.informationcommissioner.gov.uk .

Further information about our data protection policy is on the Bury Village Website Council Documentation Section.

8. Section 41 – Information provided in confidence (an absolute exemption)

This exemption relates to information provided to the Bury Parish Council in confidence by somebody outside the organisation. It cannot be used to justify withholding information which has been generated internally. Just because a document is labelled confidential does not mean it will be confidential at law. Trivial information will not be protected by this exemption. Contact the Freedom of Information Coordinator for advice on what constitutes confidential information.

9. Section 42 – Legal professional privilege (a non-absolute exemption)

This exemption will apply to most communications between Bury Parish Council staff and its solicitors (including those in-house in Legal Services).

10. Section 43 – Prejudice to Commercial Interests (a non-absolute exemption)

Information is exempt if it constitutes a trade secret or would, or would be likely to, prejudice the commercial interests of any person.