

Burnham Thorpe Parish Council

Access to Information Policy

Purpose

1. The purpose of this policy is to set out the expectations of Burnham Thorpe Parish (BTPC) Council staff and councillors when dealing with requests for Freedom of Information (FOI) and the Environmental Information Regulations (EIR). It takes account of the guidance provided by the Information Commissioner's Office (ICO) and is written in accordance with the FOI Act 2000 ('the Act') and the EIR 2004.

FOI general outline

2. As BTPC is a public authority, it is accountable for all aspects of information handling which include the collection, processing, disclosure, and deletion and/or destruction of information. Anyone can make a request to a public body for information, regardless of where they live, or their status and the council is not required to confirm the identity of the applicant unless there is just cause to do so. The information being requested does not have to be included on the council's publication scheme for it to be in scope of the Act.

3. In general, responses to FOI requests are to be completed as soon as is practical but in the worst case, within 20 working days of the request being received, unless clarifications are needed for the response work to continue.

FOI Act principles

4. The principle of the Act is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.

5. It is also the case that disclosure of information to one person is the equivalent of it being released to the world at large. This means that disclosure under the Act cannot be conditional, therefore an applicant is free to pass it on without limitations.

The scope of information

6. Information can be held in any format and could include, inter alia, maps, documents, both approved and in draft, whether in hard copy or held electronically, the content of emails held by staff and councillors on their private devices as well as devices provided by the council, handwritten memos and invoices.

7. Typically, information is related to, among other things, statistical data, running costs for the council and supporting functions, social care matters and planning applications.

8. What is not covered by the Act is personal data for which requests come under the UK General Data Protection Regulation (GDPR). Where information being requested includes or makes references to named individuals, due regard is made to their rights and freedoms, under the UK GDPR, before disclosure.

Information and documentation

9. The Act covers information, not documents, which means that:

- An applicant does not have to ask for a specific document (although this is possible)
- A request can be about a specific topic and expect BTPC to gather the relevant information to answer their enquiry, or

- The request might describe other features of the information (e.g., author, date or type of document)

Valid requests

10. BTPC is only obliged to respond to valid requests. For a request to be valid it must:

- Be in writing (could be a letter or email) or made via the web, including the *whatdotheyknow.com** website
- Include the applicant's real name
- Include an address for correspondence
- Describe the information being requested

* the '*what do they know*' platform has its own rules about the responsible use of the platform which includes the non-inclusion of personal email addresses. These are normally removed automatically from the routine messages, but BTPC is to ensure that email addresses included in attachments uploaded to the platform are redacted beforehand.

11. The onus is on BPPC to be helpful so if the description of the requested information does not meet the criteria needed, then BTPC will work with the applicant to establish a workable description.

The general approach of BTPC when processing FOI requests

12. The processing of any FOI request is conducted as follows:

- A check is made to determine whether any and all requests being made are valid
- Acknowledge the request in the first instance and indicate whether the council does or does not hold the requested information, but only if it is known. *Under the circumstances where sensitive information is being requested, the council may return a 'we cannot confirm nor deny' statement regarding the possession of the relevant information before further investigations are made*
- If clarifications are needed to enable BTPC to fulfil its obligations, then the applicant is to be approached without undue delay
- A check is made as to whether the information being requested is held
- An initial estimate of the cost of retrieving and disclosing any information is made
- Where the threshold of £450 based on 18 hours work at £25 per hour, is exceeded, BTPC are not required to proceed, but the applicant will be informed with options

13. Assuming there is information for disclosure, BTPC will:

- Undertake the search which will also include requests to councillors to search their personal devices for any information they hold relating to the request
- Review and decide whether an absolute exemption applies, or whether prejudice and public interest factors must be considered in line with the Act
- For disclosable materials, decide whether parts of them should be redacted, either because they are not relevant to the request or to protect the rights and freedoms of individuals whose personal data would otherwise be revealed unnecessarily
- For material that has been redacted or withheld, an explanation is to be provided to the applicant setting out the exemption(s) used

14. The Act requires BTPC to respond within 20 working days, where a working day is normally taken to mean Monday to Friday but does not include bank holidays. If a public

interest test is needed (see the approach to exemptions section below), then an extra 20 working days can be claimed.

Internal Review

15. If the applicant is not satisfied by the response of BTPC, they are entitled to ask for an 'internal review'. Such a request must be in writing and be submitted within 40 days of BTPC's original (full) response. Unless there is a justifiable reason not to do so, BTPC will then revisit the actions and any related decisions taken in preparing the response. Ideally (but only when possible) involving someone or third parties with appropriate standing, that were not directly involved in the original proceedings. PC shall provide an updated response to the applicant ideally within 20 working days of the internal review request being made. Where this timeline is not possible BTPC will shall provide an estimated date of delivery to the applicant.

Refusal to disclose information

16. There are occasions when BTPC is not obliged to provide the information being requested and the Act (Part II) sets out the conditions when disclosure is exempt. When a public interest exemption may apply, BTPC shall consider and record both sides of the argument, namely whether information being released is or is not in the public interest. This is important as the rationale behind any decision made may be requested by the ICO should any subsequent complaint result in the ICO's intervention.

17. There are occasions when BTPC may have information but is not obliged, for justifiable reasons, to confirm that such information is held. In such an event, BTPC is to issue a simple statement that it can 'neither confirm nor deny' it is in possession of the information.

18. Regardless of the scenarios described above, BTPC is to provide a response to the applicant, as soon as is practical and no later than 20 working days of the original request, unless a public interest test is being applied (see below). Where appropriate, the response shall include an explanation as to why information is not being disclosed with **references to which exemptions are being applied**.

BTPC approach to exemptions

19. If the requested information is subject to exemptions or where public interest considerations are necessary, BTPC is to:

- Assess the risk of disclosing the requested information
- Decide on the most appropriate exemption where disclosure could be harmful:
 - Absolute as defined in the Act
 - Public Interest (PI) Test (see below)
 - Prejudice & PI Test – need to prove prejudice, then apply the PI Test

20. Public interest broadly speaking is something that the public would benefit from knowing. BTPC will need to make a thorough analysis for disclosure as well as non-disclosure to ensure credibility of the reasoning.

Refusal to respond

21. If a request or requests are deemed vexatious or have already been dealt with, then only the briefest of responses will be made with an explanation to that effect. The term vexatious is not strictly defined but a vexatious request can be interpreted as being:

- Manifestly unreasonable/ unjustifiable, inappropriate, or improper use of a formal procedure or
- One that is disproportionate, or giving rise to an unjustified level of disruption, irritation, or distress

22. BTPC is to refer to the ICO's guidance document on dealing with vexatious requests.

23. In determining whether a request is vexatious, BTPC shall also consider:

- The burden being placed upon individual staff members or the council as a whole
- The motive of the applicant, (to irritate/annoy deliberately)
- Whether a request is a cause of harassment of or distress to staff
- Value or the seriousness of the purpose of the request

24. BTPC is to record all decisions regarding vexatious or burdensome requests with references to the salient points of the requests in question and be prepared to provide the justification to the ICO if required.

Information not held

25. For those requests for information that BTPC does not have, it is not necessary to search elsewhere for information, instead it will respond by either:

- Advising the applicant that BTPC does not hold the requested information and/or
- Advising the applicant of the public authority that is more likely to have the information, if this is already known or
- Transferring the request to the public authority who is known to have the information

Information integrity

26. BTPC is to maintain the integrity of the information being held at the time of the request. It is allowed to make routine changes to the information whilst dealing with the request as long as these would have been made regardless of the request. Scheduled deletion of requested information should be put on hold unless there is a clear justification to proceed.

EIR general outline

27. BTPC is also accountable for all aspects of its various actions which include the collection, processing, disclosure and deletion and/or destruction of information as it relates to environmental matters. Broadly speaking, the way BTPC will process such requests mirror that for FOI and are to be handled within 20 working days.

28. There are some notable differences to the FOI process:

- Requests can be made verbally: If this happens BTPC is to communicate with the requesting party, in writing, stating its understanding of the request and to seek confirmation to ensure all parties have the same understanding

- BTPC may charge fees for responding to EIR requests set at £25 per hour for the locating, retrieval and extraction of the information only. Other costs may apply including 10p per sheet of photocopying or printing and postage – if required.

EIR principles

29. The main principle behind the EIR is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to, that is to say disclosure is the default position unless there is a justifiable reason or exemption.

30. It is also the case that disclosure of information to one person is the equivalent of it being released to the world at large. This means that disclosure under the EIR cannot be conditional to the receiver not passing on the information.

31. Requests do not need to be justified and all requests are to be treated equally and no consideration of the applicant is to be made.

The scope of information

32. Information can be held in any format and could include, inter alia, maps, documents, both approved and in draft, whether in hard copy or held electronically, the content of emails held by staff and councillors on their private devices as well as devices provided by the council, handwritten memos and invoices.

33. Typically, information held may be related to

- street scene
- planning and building control
- Pollution and/or contamination levels
- Wildlife/conservation
- Parking/traffic management
- energy production
- waste and recycling
- new house builds and maintenance

34. If it is not clear whether a request is under EIR or under the FOI Act, BTPC is to seek advice from the ICO.

35. The EIR does not cover personal data for which requests are handled by subject access request processes which comes under the UK General Data Protection Regulation (GDPR). Where information includes or makes references to named individuals, due regard is made to their rights and freedoms, set out in the UK GDPR, before disclosure.

The general approach of BTPC when processing requests under the EIR

36. The processing of any EIR request is to be conducted as follows:

- Assess the risk of disclosure
- Identify if an exemption applies
- Consider whether there would be an adverse effect with disclosure
- Compile evidence (or provide a demo) as to what is likely to happen
- Apply the public interest test

37. Assuming there is information for disclosure, BTPC will:

- Undertake the search which will also include requests to councillors to search their personal devices and/or for copies of any correspondence that they may have
- Review the findings and decide whether an absolute exemption applies, or whether prejudice and public interest factors must be considered in line with the EIR
- For disclosable material, decide whether parts of it should be redacted, either because it is not relevant to the request or to protect the rights and freedoms of individuals whose personal data would otherwise be revealed unnecessarily

Refusal to respond

38. BTPC may have justifiable reasons for not disclosing information which are similar to those for FOI requests. Exemptions may apply and reference to the EIR is to be made in all instances prior to a decision whether to disclose or not. In particular, Section 12 (5) shall be considered whereby a public authority may refuse to disclose information to the extent that its disclosure would have an adverse effect on, for instance, international relations, defence, national security or public safety.

39. BTPC is to record all decisions for non-disclosure, **inform the applicant about the exemptions being applied** and be prepared to provide the justification to the ICO if required.

External support

40. When requests are of a complex or sensitive nature, BTPC is to consider using external support services, such as the ICO or an external data protection specialist/ appropriate third party. In the case of the latter, a data processing agreement and/or a non-disclosure agreement (NDA) is to be in place between BTPC and the third party, prior to disclosure of information, confidential or otherwise.