

Information Rights Policy

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Control schedule

Approved by	Corporate Policy and Strategy Committee
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Senior Responsible Officer	Kevin Wilbraham, Information Governance Manager
Author	Douglas Stephen, Information Rights Manager
Scheduled for review	

Version control

Version	Date	Author	Comment
0.1	18/07/2016	Douglas Stephen	1 st draft of report
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Committee decisions affecting this policy

Date	Committee	Link to report	Link to minute
30/09/2014	Corporate Policy & Strategy	Information Governance Policies	Minute
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Information Rights Policy

Policy statement

- 1.1 This Policy formalises the City of Edinburgh Council's approach to facilitating and promoting our citizen's information rights. In particular, it sets out the Council's commitment to the following principles:
 - 1.1.1 To respect the information rights of individuals in accordance with the principles set out in the EU Data Protection Regulation (GDPR), UK data protection legislation, Freedom of Information (Scotland) Act 2002, Environmental (Scotland) Regulations 2004, INSPIRE (Scotland) Regulations 2009 and the Pupils' Educational Records (Scotland) Regulations 2003.
 - 1.1.2 To advise and assist people in exercising their rights of access to information held by the Council.
 - 1.1.3 To maximise the publication of information through the Council's Publication Scheme, Freedom of Information (FOI) Disclosure Log and other initiatives, including Open Data, and to promote a culture of openness within the Council.
 - 1.1.4 To conduct business in an open, accountable and transparent way to promote trust in how the Council operates.

Scope

- 2.1 This policy applies to all employees of the Council (including temporary staff) and elected members when carrying out official duties for the Council. It also applies to third parties who hold or manage information on the Council's behalf. Any contractor or agent performing work for, or on behalf of the Council, will be required to assist the Council in implementing its obligations under legislation with the prompt provision of information when requested by the Council.
- 2.2 This policy sets out the rights of individuals when requesting information held by the Council, subject to certain limited conditions and exemptions, exceptions or limitations. This includes:
 - 2.2.1 All recorded information within the definitions contained in the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.
 - 2.2.2 Spatial data sets, or spatial data services about the environment or metadata relating to these as defined by the INSPIRE (Scotland) Regulations 2011.

- 2.2.3 Personal information within the definition contained in the GDPR.
- 2.2.4 Pupil information as defined under Pupils' Educational Records (Scotland) Regulations 2003.
- 2.3 This policy also addresses the rights granted to individuals under the GDPR regarding the processing of their personal data.

Definitions

- 3.1 **Data Controller:** a legal person or organisation who determines the purposes for which, and manner in which, personal information is to be processed. This may be an individual or an organisation. Data Controllers can process personal data jointly with other data controllers for specified purposes. The City of Edinburgh Council is a data controller. Elected members are data controllers for the purposes of their constituency work.
- 3.2 **Data Protection Act 1998:** gives effect in the UK law to the EC Directive 95/46/EC and came into force on 1 March 2000 repealing the Data Protection Act 1984. The Data Protection Act 1998, together with a number of Statutory Instruments, requires data controllers to comply with the legislation governing how personal data is used for statutory and business purposes. Amendments have also been created by other legislation such as the Freedom of Information Act 2000. It gives rights to individuals in relation to how organisations can use their personal data.
- 3.3 **Data Protection Act 2018:** The UK Government published a new Data Protection Bill in September 2017. It sets out new standards for protecting personal data (in accordance with GDPR) and preserves certain exemptions available under the current Data Protection Act 1998. It also transposes into domestic legislation the EU Law Enforcement Directive. The new Bill will result in a new Data Protection Act replacing the current Data Protection Act (1998) and will add clarity on how the UK will apply statutory controls to areas of the GDPR where Member States have been given some flexibility. As and when the UK leaves the EU, the new Data Protection Act would replace the GDPR.
- 3.4 **Data Protection Officer (DPO):** is responsible for monitoring the Council's compliance with data protection principles, and providing advice to Senior Management on data protection issues. They are also the key contact between the Council and the ICO. The Council's DPO is the Information Governance Manager.

- 3.5 Data Subject:** the living individual to whom the data relates. For example, a CCTV image which can identify someone when linked to building access control codes.
- 3.6 Exemptions:** Part 2 of the Freedom of Information (Scotland) Act 2002 contains a number of exemptions which, if applicable, means that information covered by a request does not need to be disclosed. Similarly, under the Data Protection Act 1998 exemptions or restrictions may be applied in certain circumstances.
- 3.7 Exception:** This is a regulation under regulations 10 or 11 of the Environmental Information (Scotland) Regulations 2004 which, if applicable to information covered by the request, means that the information does not need to be disclosed.
- 3.8 Information:** This is information recorded in any form or format held by the Council, or information held by a third party on the Council's behalf.
- 3.9 Limitation:** This is a regulation under regulation 10 of the INSPIRE (Scotland) Regulations 2009 which, if applicable to the information covered by the request, means that the information does not need to be disclosed.
- 3.10 Parent:** parents, guardians, individuals who hold parental responsibilities and individuals who have care of a child (e.g. a foster parent or another relative).
- 3.11 Processing** – is all actions relating to personal data. Gathering, recording, analysing, amending, using, sharing, disclosing, storing and destroying personal data are all covered by this definition.
- 3.12 Privacy notice:** this is information provided to data subjects to inform them about why we need their personal data and what we will do with it.
- 3.13 Special category data:** types of personal data considered to be more sensitive e.g. information about health, religious beliefs, political opinions, trade union membership, sexual orientation, ethnicity, and biometric or genetic data.
- 3.14 Personal data (or information):** information about a living individual who can be identified from that information or from additional information held, or obtained, by the Council. Examples of personal data are contained in paper files, electronic records and visual and audio recordings.
- 3.15 Records management:** These are the processes and practices that ensure Council records are systematically controlled and maintained, covering the

creation, storage, management, access, and disposal of records, in compliance with best practice, legal obligations and policy requirements.

- 3.16 Scottish Information Commissioner:** is responsible for the promotion and enforcement of the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004 and the INSPIRE (Scotland) Regulations 2009 and any associated Codes of Practice.
- 3.17 Senior Information Risk Owner:** the Head of Strategy and Insight is the Council's Senior Information Risk Owner (SIRO). The SIRO has delegated authority through the Council Leadership Team with specific responsibility for information rights.
- 3.18 Sensitive personal data:** requires a higher level of consideration. Information will be considered 'sensitive personal data' if it relates to a person's: racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health or condition, sexual life, and criminal offences or alleged criminal activity (including any criminal proceedings).
- 3.19 Subject Access Request (SAR)** - the right granted to an individual by the Data Protection Act 1998 to request a copy of personal information held about them.
- 3.20 UK Information Commissioner** - is the independent regulator responsible for ensuring all organisations comply with the Data Protection Act. Organisations are required to notify the ICO of how they process personal data and if they breach the Act. The Commissioner has been granted enforcement powers regarding non-compliance, these include the ability to issue information and enforcement notices, impose large fines (up to £500,000), and bring a criminal case against an organisation. Further information about data protection is available on the ICO website at www.ico.org.uk.

Policy content

Dealing with Requests

- 4.1 The Council has statutory obligations around access to its information. It will comply with these as follows:
- 4.1.1. Providing a general right of access to its recorded information, excluding environmental information and personal information, under the Freedom of Information (Scotland) Act 2002.

- 4.1.2. Providing access to its recorded environmental information under the Environmental Information (Scotland) Regulations 2004. These concern matters such as air, water, soil, landscaping, natural sites, biodiversity, human health and safety, and decisions and activities affecting these issues.
- 4.1.3. Providing access to any of its spatial datasets or spatial data services about the environment, with appropriate metadata, under the INSPIRE (Scotland) Regulations 2009.
- 4.2 The Council will also meet its statutory obligations under data protection legislation by supporting individuals in understanding what information is held about them and providing them with a copy of that information, where appropriate. This is known as a 'subject access request' (SAR).
- 4.3 The Council will also meet its obligations under the Education (Pupil Records) (Scotland) Regulations, 2003, and give parents access to their child's educational records.
- 4.4 In all of these statutory obligations, the Council has the right and duty to apply certain limitations and exemptions to protect legitimate interests. In particular, it will not provide personal data of third parties without their consent, vital interest or a statutory basis to do so.
- 4.5 All responses to requests for information will be agreed by a Senior Manager (Tier 3) within the relevant service before they are released.
- 4.6 The Council will treat any individual request for personal data that has already been sent or disclosed to that individual as a 'business as usual' request and send replacement copies, subject to being satisfied of the individual's identity and right to receive the information.

Request timescales

- 4.7 The Council will respond to all requests promptly following receipt of a valid request, and will respond within the statutory timescales, as set out below.
 - 4.7.1. Freedom of Information (Scotland) Act 2002: 20 working days
 - 4.7.2. Environmental Information (Scotland) Regulations: 20 working days
 - 4.7.3. INSPIRE (Scotland) Regulations 2009: 20 working days
 - 4.7.4. GDPR: 30 calendar days (One month)
 - 4.7.5. Pupils' Educational Records (Scotland) Regulations 2003: 15 school days
- 4.8 The Council will notify any requestor where a response is likely to be late and will provide a new estimated response date along with advice on their statutory rights.

- 4.9 Under the Environmental Information (Scotland) Regulations, 2004, the Council can extend the timescale for responding to a request for a further 20 working days, in certain and limited circumstances. The requestor will be notified if the Council does intend to extend the timescale for response and the reason why.
- 4.10 Under GDPR, complex or numerous SAR requests can be extended by a further two months. In such cases, the requestor will be notified within one month of the receipt of the request, with an explanation as to why the extension is necessary.
- 4.11 Where SAR requests are manifestly unfounded or excessive, the Council can charge a reasonable administrative fee, or refuse to respond. In such circumstances, the Council will explain why to the individual informing them of their right to complain to the UK Information Commissioner and right to a judicial remedy. The Council will respond without undue delay and at the latest within one month.
- 4.12 Under GDPR, individuals also have the right to obtain confirmation that their personal data is being processed, and other supplementary information – this largely corresponds to the information that the Council makes available through privacy notices.

Publishing information

- 4.13 The Council will proactively publish information to promote and facilitate a culture of openness and transparency. In particular, it will:
- 4.13.1. Maintain an up to date publication scheme, as required under the Freedom of Information (Scotland) Act 2002, detailing what information the Council routinely makes publicly available.
- 4.13.2. Identify data which can be shared and used publicly through the Council's Open Data Strategy.
- 4.13.3. Maintain a publicly available disclosure log which records all requests for information received, and shows the responses issued in relation to those requests.

Withholding and redacting information

- 4.14 Where the Council seeks to rely on any exemption, exception, condition or limitation for withholding information, it will explain, in detail to the requestor, why this applies to the information requested.
- 4.15 Similarly, the Council will explain to a requestor why information has been redacted or extracted in order to meet conflicting statutory obligations to both provide access and protect the legitimate interests of third parties.

- 4.16 The Council will not routinely redact the names of Council officials from information produced in the course of their work, but reserves the right to do so in specific circumstances.

Charging for requests

- 4.17 The Council will not charge for information provided in the Council's Publication Scheme, unless otherwise stated. There may be a charge for printing and postage.
- 4.18 The Council will charge requests made under FOI(S)A, EIRS and INSPIRE Regulations where it is appropriate to do so. These charges will be based on statutory guidance and will be published on the Council's website.
- 4.19 The Council does not charge for SARS or requests to view pupil educational records. It does, however, reserve the statutory right to charge for SAR requests that are manifestly unfounded or excessive.

Reviewing requests

- 4.20 The Council will meet its statutory obligations in providing a process to review its decisions and performance in relation to information request under information rights legislation.
- 4.21 The Council has 20 working days to respond to such requests but will inform applicants where this may be late.
- 4.22 The Council commits to supporting the Scottish Information Commissioner, when investigating complaints made against it, and will comply with any decision notices issued by the Commissioner.
- 4.23 While there is no statutory requirement for the Council to review any concerns raised in relation to the SAR process, the Council will review any such requests for review and respond within 20 working days. The Council does not seek to affect the statutory rights of individuals to notify the UK Information Commissioner's Office if they are unhappy with how the Council has acted.
- 4.24 The Council will review any concerns raised in relation to the provision of pupil information under the Pupils' Educational Records (Scotland) Regulations 2003 and respond within 20 working days.

Individual Rights under GDPR

- 4.25 In addition to a 'right of access', individuals have other rights in relation to the information the Council holds about them. The Council will respond to these requests within 20 calendar days.

- 4.26 Individuals have right to be informed about why the Council collects data about them, and how the Council uses, shares, and stores that data. This information is provided through a privacy notice.
- 4.27 Individuals are entitled to have personal data rectified if it is factually inaccurate or incomplete. If the Council decides to take no action, it must explain why to the individual, informing them of their right to complain to the UK Information Commissioner and right to a judicial remedy. The Council will not alter its records if an individual disagrees with a recorded professional opinion about them. Where there is disagreement, the Council will notify the individual and set out the reasons for the decision.
- 4.28 Individuals have a 'the right to be forgotten'. This enables an individual to request the deletion or removal of personal data where there is no further reason for its continued processing. However, the right to erasure is not absolute and can only be applied in certain circumstances.
- 4.29 In certain circumstances, individuals have a right to stop an organisation processing their personal data. When processing is restricted in this way, the Council is permitted to store the personal data, but not to process it any further. The Council can retain just enough information about the individual to ensure that the restriction is respected in future. If the Council decides to lift a restriction on processing, it must inform the individual.
- 4.30 Individuals have a right to data portability which allows individuals to obtain and reuse their personal data for their own purposes across different services. It allows them to move, copy or transfer personal data easily from one IT environment to another in a safe and secure way, without hindrance to usability. The right to data portability is not an absolute right and can only be used under certain conditions. However, if appropriate, the Council must provide the personal data in a structured, commonly used and machine-readable form (e.g. CSV files) to enable other organisations to use the data. If requested, the Council may be required to transmit the data directly to another organisation if this is technically feasible.
- 4.31 Under certain conditions, individuals have the right to object to processing based on the performance of a task in the public interest/exercise of official authority; direct marketing (including profiling); and processing for purposes of scientific/historical research and statistics.
- 4.32 Data protection legislation provides safeguards for individuals against the risk that a potentially damaging decision is taken without human intervention. This is usually because of profiling and automated decision making. The Council will tell individuals when a decision has been taken solely using automated decision making and explain the right to request a review of the decision.

Implementation

- 5.1 The Information Governance Unit Council has an annual action plan for information governance development and compliance, including information rights legislation. The plan will outline key tasks, outcomes, accountabilities and progress.
 - 5.1.1. Key measurements of successful implementation of this policy will be:
 - 5.1.2. Meeting statutory deadlines when responding to requests
 - 5.1.3. Managing the review processes to address concerns without regulator involvement
 - 5.1.4. Operating a model of continuous review and improvement when responding to requests.
- 5.2 Performance will be routinely reported through the Council's performance framework and regulators, as required.
- 5.3 Council staff will be given awareness, induction and refresher training on information rights legislation.

Roles and responsibilities

- 6.1 The Information Governance Policy provides a detailed explanation concerning overall roles and responsibilities around information governance. This section provides a summary of those responsibilities, but also outlines specific responsibilities in relation to compliance with the access legislation detailed in this policy.

Council Leadership Team

- 6.2 The Council Leadership Team has overall responsibility for information governance. This involves providing high-level support to ensure that each directorate and locality applies relevant information governance policies and controls, including compliance with information rights legislation.

Data Protection Officer

- 6.3 The Council's Information Governance Manager is the Council's Data Protection Officer (DPO). The DPO is responsible for ensuring that the organisation is

compliant with GDPR and the future Data Protection Act 2018, including upholding the rights of individuals.

Information Governance Unit

6.4 The Information Governance Unit will:

- 6.4.1. Act as the first point of contact for all information rights issues affecting the Council
- 6.4.2. Log, process and respond to all information requests received by the Council (excluding any requests under the Pupils' Educational Records (Scotland) Regulations 2003 which are dealt with directly by the school)
- 6.4.3. Assess and log requests and allocate to the relevant service to ask them to identify any relevant, recorded information that they hold which would fulfil the request
- 6.4.4. Provide the final decision as to whether any exemption/ exception/ limitation applies to the information requested from the Council
- 6.4.5. Support schools and teachers in complying with the Pupils' Educational Records (Scotland) Regulations 2003
- 6.4.6. Publish details of all requests and the responses to these on the Council's disclosure log

Information Rights Manager

- 6.5 The Information Rights Manager is responsible for co-ordinating the work of the Information Rights Team, as well as monitoring the manner and timescales in which requests for information are dealt with.
- 6.6 The Information Rights Manager reports on compliance with the policy and procedures, and also provides monthly performance reports, as required
- 6.7 The Information Rights Manager also provides guidance and training and has responsibility for the Council's Publication Scheme.

Review Officer

- 6.8 To ensure impartiality, reviews of decisions where the applicant is dissatisfied with how their response has been dealt with are carried out by the Council's Review Officer. The Review Officer is part of the Information Compliance Team under the Information Governance Unit.

6.9 The Review Officer also acts as the liaison link with external regulators and provides submissions in relation to any appeals made by applicants.

Managers and supervisors

6.10 All managers and supervisors have a responsibility for enabling effective information governance within their respective service areas and teams. In relation to this policy this includes:

6.10.1. The provision of local and effective arrangements to ensure the timely return of relevant information to the Information Governance Unit. This includes compliance with the Council's Records Management and Managing Personal Data Policies.

6.10.2. Ensuring that staff have received information governance training and are aware of their role and responsibilities in relation to identifying and processing requests for information, and assisting applicants.

Head teachers

6.11 All Head Teachers must ensure effective arrangements are in place to ensure compliance with the provisions of the Pupils' Educational Records (Scotland) Regulations 2003, including:

6.11.1. Acknowledging all parental requests to access educational records

6.11.2. Ensuring that requests are valid (requests must be in a written format; must state the name of the applicant and an address for correspondence; and describe the information being requested).

6.11.3. Making arrangements for parents to visit and view records within 15 school days

6.11.4. Ensuring that only relevant information is made available

Staff

6.12 All Council staff will:

6.12.1. Be aware of that the Council has obligations to identify, support and respond to statutory requests for information under the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004, the INSPIRE (Scotland) Regulations 2009, and the GDPR.

6.12.2. Be able to identify statutory request for information from business as usual requests

- 6.12.3. Provide basic advice and assistance to persons making such requests for information
- 6.12.4. Know to pass any these requests to the Information Governance Unit for logging and processing
- 6.13 Council staff that are nominated as information rights contacts within their service area are expected to assist the Information Governance Unit in providing information and context in responding to requests.
- 6.14 Nominated contacts must ensure that any information provided is signed off by a Tier 3 manager prior to this being passed to the Information Governance Unit for responding.

School staff

- 6.15 All school staff must additionally:
 - 6.15.1. Be aware of the requirements of the Pupils' Educational Records (Scotland) Regulations 2003
 - 6.15.2. Be able to identify any request that falls under Pupils' Educational Records (Scotland) Regulations 2003
 - 6.15.3. Provide advice and assistance to parents making requests for information
 - 6.15.4. Know to pass any information request onto the Head Teacher

Related documents

- 7.1 Information Governance Policy
- 7.2 Archives Policy
- 7.3 Data Quality Policy
- 7.4 Managing Personal Data Policy
- 7.5 Record Management Policy
- 7.6 Re-use of Public Sector Information

Equalities impact

- 8.1 There is no adverse impact on any group in terms of race, religion, disability, ethnic origin, sexuality or age in relation to this policy.
- 8.2 The Act includes clauses relating to information about young children and secondary legislation provides legislative grounds to be followed when dealing

with personal information about people who have a limited capacity as to the understanding of their rights under the Act. Secondary legislation also provides clauses to ensure compliance with specific categories of information such as adoption and education records.

Sustainability impact

9.1 There is no sustainability issues arising from this policy.

Risk assessment

10.1 The risks of not implementing this policy include:

10.1.1 Distress or harm to individuals or organisations.

10.1.2 Reputational damage to the Council.

10.1.3 Financial loss or monetary penalty imposed.

10.1.4 Detrimental impact on Council business and service delivery.

10.1.5 Non-compliance with legislation and potential litigation.

Review

11.1 This policy will be reviewed annually or more quickly if required by significant changes in legislation, regulation or business practice. It will be reviewed by the Information Council and presented to the Council committee annually, in line with the Council's Policy Framework.