

# HURSTBOURNE TARRANT PARISH COUNCIL

## Freedom of Information for Parish and Town Councils: A guide

The Freedom of Information Act 2000 gives a right of access to any member of the public to receive information from public bodies. Parish, town and district councils are defined as public bodies under the Act.

### Requests - Publication Scheme

All councils should have published their revised Publication Scheme by end December 2008 – a list of the types (classes) of information which the council regularly publishes (such as minutes of meetings, parish plans, annual reports etc.) or holds (information generated by other organisations would be included here) The scheme should be made available on the council's website and/or published and made readily available in hard copy. In addition there should be information for anyone making a request how to obtain any item on the Scheme, (who to write to for example or how to access the website), and what payment is required. It is permissible to charge a publication cost, or fees for photocopies and postage.

### Requests - Timescales

Requests must be answered within **20 working days**, although the council has additional time to consider whether the information should be released in the public interest if an exemption applies.

### Other Information Requests

Information which is not on the Publication Scheme can also be requested. In general this information is likely to be material which the council does not make readily accessible for a specific reason – for example, parts of minutes which are considered confidential, a confidential report, commercially sensitive information, and similar. The Act allows authorities to withhold information considered exempt, but in most cases the authority must weigh the public interest in seeing the information against the exemption, and the presumption will be in favour of disclosure. A list of the exemptions is included in Appendix 1.

For this reason, a request for information which is not on the Publication Scheme may need to be considered by the parish council before being released. Councils will need to set up their own system for dealing with this as part of their process of dealing with requests for information. It is important to document the request and the process used in deciding whether information is released, since any enquirer will be entitled to complain if they feel they have not received some or all of the information they requested.

### Exemptions

Information protected by absolute exemptions is not made available to applicants, and the council is not obliged to confirm or deny that such information is held if to do so would reveal the nature of the information. For qualified exemptions the council must confirm or deny that such information exists, even if a public interest test exempts such information, unless the statement of confirmation/denial would itself disclose exempt information. There is a list of exemptions at the end of this document.

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It should be noted that an individual's own personal data is only exempt because it is accessible under other legislation (the Data Protection Act 1998). The council must still provide such information on request and on payment of an appropriate fee if required. Similarly, environmental information is only exempt because provision of environmental information is covered by the Environmental Information Regulations 2004, and in practice any request (whether written or verbal) for environmental information should be processed as it would be for FoI.

More information on this area is available by contacting **Freedom of Information Officer, Legal Services, Beech Hurst, Weyhill Road, Andover, SP10 3AJ**, (see contact details Appendix2).

The legislation also makes provision for vexatious or repeated requests, to which a council is not obliged to respond. A repeated request is either the same or similar information request by the same person or a group of people in an unreasonably short space of time; a vexatious request is one clearly intended to occupy the clerk or parish council's time rather than being a genuine request for information. Document decisions made on such requests and advise the enquirer of the decision. You do not have to supply the information requested for these requests.

### **Handling Documentation**

Although you may receive very few requests, it is a good practice to track the progress of any request, especially where information may be exempt. The clerk should keep a file of documented requests and agree a retention schedule after which they can be deleted (current year plus two is appropriate). Periodically the committee could consider which requests for 'unpublished' information have been received, and whether such information should be included on the website.

### **Complaints**

An enquirer who considers their enquiry has not been fulfilled may complain directly to the parish council (which must have a documented process in place to deal with complaints) or to the Information Commissioner. In practice the Information Commissioner is likely to direct complaints to the parish council first and only when this avenue has been used will a complaint be considered by the Commissioner's office. The Commissioner may make a decision on the complaint and serve a decision notice on the council. There is a further, independent tribunal to which a complainant and the council can apply if they disagree with the Commissioner's decision.

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### Appendix 1: Absolute and Qualified Exemptions

There are 23 exemptions, not all of them applicable to public authorities. Those **highlighted** are most likely to apply information which councils hold. Exemptions apply to information if:

#### Absolute exemptions:

- **it is reasonably accessible to the applicant by other means even if this involves payment; (Sect. 21)**
- it is information supplied by, or relating to bodies dealing with security matters; (Sect. 23)
- it constitutes court records; (Sect. 32)
- it is required for the purpose of avoiding an infringement of the privileges of either House of Parliament; (Sect. 34)
- disclosure would prejudice the effective conduct of public affairs; (Sect. 36)
- **it is personal data the disclosure of which would contravene the Data Protection Act; (Sect. 40)**
- **it was provided in confidence; (Sect. 41)**
- its disclosure is prohibited by any enactment, is incompatible with a Community obligation, or would constitute contempt of court; (Sect 44)

#### Qualified exemptions:

- **it is intended for publication at a later date and can reasonably be withheld until publication; (Sect. 22)**
- it is required for the purpose of safeguarding national security; (Sect. 24)
- its disclosure would prejudice the defence of the realm; (Sect. 26)
- its disclosure would prejudice international relations; (Sect. 27)
- its disclosure would prejudice relations between the administration of the UK and any other such administration; (Sect. 28)
- its disclosure would prejudice the economic interests or financial interest of the UK, or any administration in the UK; (Sect. 29)
- **it is information held for criminal investigations or proceedings; (Sect. 30)**
- **it is information which has been used or was obtained to investigate, detect or prevent crime or other areas of law enforcement; (Sect. 31)**
- it is some form of information held by a public authority for audit functions; (Sect. 33)
- it is data which relates to the formulation of government policy, ministerial communications, provision of advice by any of the Law Officers, or the operation of any Ministerial private office; (Sect. 35)
- disclosure would prejudice the effective conduct of public affairs (excluding matters covered under the absolute exemption for this area); (Sect. 36)
- it is data which relates to communications with members of the Royal Family or Household, or the conferring of Crown honours or dignities; (Sect. 37)
- **disclosure would endanger an individual's physical or mental health or safety; (Sect. 38)**
- **it is environmental information covered by the Environmental Information Regulations; (Sect. 39)**

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- it is personal data (concerning a third party) the disclosure of which would contravene the Data Protection Act; (Sect. 40). The duty to confirm or deny does not apply to this information.
- it is subject to legal professional privilege; (Sect. 42)
- disclosure would be prejudicial to commercial interests; (Sect. 43)

### Appendix 2: Sources of further information

#### **Test Valley Borough Council:**

Freedom of Information Officer, Legal Services, Beech Hurst, Weyhill Road, Andover, SP10 3AJ.

Tel 01264 368000

Email [foi@testvalley.gov.uk](mailto:foi@testvalley.gov.uk)

[www.testvalley.gov.uk](http://www.testvalley.gov.uk)

#### **Information Commissioner:**

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

[www.ico.gov.uk](http://www.ico.gov.uk)