

NOT PROTECTIVELY MARKED



Derbyshire Constabulary

FREEDOM OF INFORMATION POLICY

POLICY REFERENCE 06/138

This policy is suitable for Public Disclosure

Owner of Doc: Head of Department, Corporate Services

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1. Policy Identification Page

Policy title:	Freedom of Information Policy
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Policy implementation date:	March 2005
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Department / Division responsible:	Corporate Services		
Policy owner:	Head of Department		
Last reviewed by:	Kev Lea	Date last reviewed:	January 2014
Impacts on other policies / guidance / documents (<i>list</i>):			
None			

Security Classification: NOT PROTECTIVELY MARKED
Disclosable under FOI Act: YES
Policy to be published on Intranet: YES
Policy to be published on Force Website: YES

2. Legislative Compliance

This document has been drafted to comply with the principles of the Human Rights Act. Proportionality has been identified as the key to Human Rights compliance, this means striking a fair balance between the rights of the individual and those of the rest of the community. There must be a reasonable relationship between the aim to be achieved and the means used.

Equality and Diversity issues have also been considered to ensure compliance with the Equality Act 2010 and meet our legal obligation in relation to the equality duty. In addition, Data Protection, Freedom of Information and Health and Safety Issues have been considered. Adherence to this policy or procedure will therefore ensure compliance with all relevant legislation and internal policies.

3. Introduction

The Freedom of Information Act 2000 was implemented within the Constabulary on 01 January 2005 and gave a general retrospective right of access to all types of recorded information held by public authorities. The Act relates to all information, with the exception of personal data and includes visual, audio and document based information as well as information stored on computers.

The Act allows any person worldwide to make a request for information to a public authority, provided the request is in writing, legible, identifies to whom the response should be sent and describes the information requested.

All public authorities are required to maintain a 'Publication Scheme' that clearly sets out the different types of information available, how they intend to publish it and what costs (if any) are applicable. The Derbyshire Constabulary website contains the Force Publication Scheme which can be found at www.derbyshire.police.uk/About-us/Freedom-of-Information/InformationClasses.aspx

Following receipt of an application the Force must: -

- Confirm that we hold the information, and
- If held disclose it unless the whole or part of it is protected from disclosure by the application of one or more of the exemptions.

In responding to Freedom of Information requests the Force will adhere to the [ACPO National Manual of Guidance](#) and its own [internal force procedure](#).

All Freedom of Information requests will be forwarded on receipt to the Freedom of Information office.

4. Policy Statement

Derbyshire Constabulary will apply a structured framework for dealing with Freedom of Information requests in order to ensure that the Force implements its legal requirements under the Act.

5. Procedures

Following receipt of an application the Force has a legal duty to respond within 20 working days: -

- By confirming whether or not the organisation holds information relevant to the request, and;
- Where the information is held, there is a legal obligation to provide it subject to any exemption from disclosure.

Failure to disclose relevant information, which is not subject to an exemption, is an offence and may make the Force and individual legally liable under the Freedom of Information Act.

In the first instance, the Force response to a request for information under the Freedom of Information Act 2000 will be to check the 'Corporate Level of Information/Records' held. This is in essence the corporate memory of the Force and contains numerous files/records that are used as the basis of knowledge for a decision to be made for further action/progress of any current or future business of the organisation.

On receipt of a request the Freedom of Information Officer will assess the application and log it in to the Cyclops EDRMS system.

Any request for personal information will be processed as a [Subject Access](#) application under the provisions of Section 7 of the Data Protection Act 1998. If the request is for information under both Data Protection and Freedom of Information the request will be split accordingly for a separate response to be given for each area of the request.

The Freedom of Information Officer will be responsible for recording the timing and receipt of the request and ensuring these limits are complied with.

Searches will then commence to locate the information which may involve requests being sent out to specific departments/business areas for assistance. It is an offence under Section 77 of the Act to fail to disclose, alter, tamper with or destroy any relevant information/record after an original request has been received.

Once collated the information should be forwarded to the Freedom of Information Officer within the time allocated to allow formulation of a suitable response. When returning any information it is vital that any concerns relating to it and/or possible disclosure are communicated as this will allow the Freedom of Information Officer to assess and, if appropriate, apply one of the permitted exemptions under the Act.

The majority of information will be supplied free of charge. However, there are circumstances where a fee can be levied namely: -

1. If it exceeds the 'appropriate limit', as prescribed by the Secretary of State which is currently set at 18 hours of staff time or £450. However, in such cases the starting point of the Constabulary is that no further work will be commenced even if excess payment is offered.
2. It is specified as an information type that incurs a charge within the Police Authority approved fees and charges scheme (<http://www.derbyshire.police.uk/About-us/Freedom-of-Information/Services-Provided/Fees-and-Charges.aspx>). This will include requests for Road Traffic Collision searches received from companies.

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Where a fee is relevant the applicant will be notified. Only when it is confirmed that they are prepared to pay the required fee and the fee is received will the 20 day period commence.

A copy of requests and the relevant responses will be kept by the Freedom of Information Officer for future use in the event of appeals or repeat requests. In addition all responses will be published on the Force web site at <http://www.derbyshire.police.uk/About-us/Freedom-of-Information/Lists-and-Registers/FOI-Disclosure-Logs/FOI-Disclosure-Logs.aspx>

If a member of staff receives a written freedom of information request during their normal tour of duty a copy should be scanned and emailed to the Freedom of Information Officer prior to the end of their working day. Details of when and how the request was received, their own name, service number, section and contact telephone number should also be included for future contact if necessary.

The Freedom of Information Act relates primarily to information and records not documents. As the Act is primary legislation it takes primacy over any internal Constabulary practices, e.g. the Force Protective Marking Policy. Within this context the area of minute taking is particularly relevant and the ACPO Minute Takers Guidance should be referred to for more detail <http://srvfhq33/index.asp?locID=1302&docID=4954>

Therefore the categorising of documents under this scheme does not automatically mean that the information will not be released. Where this is the case a critical analysis of the information will be made by the Freedom of Information Officer before any disclosure is made to include liaison with the data supplier where appropriate.

The Information Commissioner will, on a regular basis, check the record keeping of the Force against its policy and the review schedules.

Exemptions

The Freedom of Information Act requires the force to disclose any relevant information to the applicant, in full, unless there are genuine and substantial reasons for not doing so. The information can be withheld in the following circumstances: -

- i. One of the 'absolute' or 'conditional' exemptions applies to the information;
- ii. In the case of a conditional exemption a 'Harm Test' is carried out, i.e. what specific prejudicial impact would the disclosure have and/or;
- iii. The 'Public Interest Test' is applied to each claimed exemption (if required under the Act).

The Act contains a mixture of 'absolute exemptions' where all information falling within these categories is exempt from disclosure per se and 'conditional exemptions' where the information contained within these categories must be disclosed unless there are specific reasons for not disclosing the information i.e. harm can be evidenced. Details of the exemptions can be found in the [ACPO National Manual of Guidance](#) (p54).

Internal Review

Any person who has requested information from the Force (or from the Derbyshire Safety Camera Partnership) and is not satisfied with the reply they receive has a right to request an internal review of the initial decision/information disclosed.

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Any request for a review will be logged by the Freedom of Information Officer who will also arrange a review panel which will consist of at least 2 members selected from the Deputy Chief Constable, the Force Solicitor, the Head of Department Professional Standards, the Head of Department, Corporate Services and any other appropriate senior officer.

The Freedom of Information Officer will collate the original request, the corporate information and the corporate response. A report will then be prepared and presented to the review panel for their consideration.

The result of the appeal will be passed to the applicant informing them that should they wish to take the matter further they can appeal to the Information Commissioner.

On receipt the Information Commissioner will consider the facts and decide whether or not there is a prima facie case to be made. If so, a Section 50 notice may be issued and an investigation undertaken. On conclusion the Information Commissioner may serve a Section 54 Enforcement Notice on the Force to disclose further information or inform the requestor that no further action or disclosure is relevant. This Notice and further legal action are open to appeal by both the force and the requestor.

If it appears at any time that the appeal is not against the Force but against an individual, then the matter will be immediately referred by the Freedom of Information Office to the Head of Department, Professional Standards for consideration of the most appropriate method of investigation.

6. Monitoring and Review

The Head of Department, Professional Standards is responsible for monitoring the implementation and impact of this policy.

A compliance audit will be undertaken at appropriate intervals to ensure accuracy of the records being maintained.

The policy will be reviewed every 2 years.

7. Appeals Process

The Appeals Process in relation to this policy is fully detailed within the procedures.

If a member of staff has an issue with the application of this policy, they must take action as directed within the procedures. If the issue is not resolved then they have recourse via the Internal Review Panel, Information Commission and Information Tribunal.

Members of the public who take issue with the application of this policy have recourse to the appeal process detailed in the procedures. If the appeal is not resolved by the Internal Appeal Board then the requestor has the right to appeal to the Information Commissioner.