

How Hickling Parish Council processes FOI Requests.

- 1.0 When you write to anyone on the Council, your correspondence is checked by the recipient to see if it contains a request for recorded information.
- 2.0 All requests for recorded information are processed as FOI requests if they mention the Act or not.
- 3.0 All FOI requests are acknowledged by the Duty FOI Officer. The acknowledgement will contain:
 - 3.1 A case number which should be used in all correspondence
 - 3.2 If possible, a statement of what is being requested
 - 3.3 If possible, a due date by which a decision will be supplied
 - 3.4 The due date under the Act is within 20 working days after a well defined request is received.
 - 3.5 The calculation of working days used is full working days. The day of receipt is therefore not counted, but the decision date is.
- 4.0 If it is not clear what is being requested, the acknowledgment will not contain a due date. It will contain a request for clarification, and the due date will only be assigned when the Council is clear what it is being asked for. The clock only starts to run when the Council knows what is being asked for.
- 5.0 A decision notice will be sent on or before the due date.
 - 5.1 If the decision is that the Council holds and will supply the information requested, it will be delivered by the due date.
 - 5.2 Material supplied may be redacted on grounds including privacy, public policy, defamation.
 - 5.3 A refusal will often contain comments on justification or reason for refusal.
- 6.0 If you disagree with the decision you may apply to the Clerk or FOI Officer for an internal review. Any written expression of dissatisfaction with a decision will be treated as a request for internal review, regardless of whether it explicitly requests one.
 - 6.1 Internal reviews will usually consist of a written report by a councillor assigned by the chair.
 - 6.2 If you disagree with the results of the internal review you may appeal to the ICO.
 - 6.3 If you disagree with the ICO decision you may appeal further to Tribunal.
- 7.0 All correspondence will be sent under signature of the Duty FOI Officer. The Duty Officer is assigned by the Chair. The assigned Duty Officer at any particular time is never personally identified.

How Hickling Parish Council processes Subject Access Requests.

Requests for personal information are not FOI requests but Subject Access Requests. These should be submitted to the Clerk using NNDC forms and procedures. Forms may be obtained from the NNDC web site's Data Protection pages. If you need help with them please contact the NNDC Data Protection Officer.

Notes and Questions

- Correspondents can help by making any information requests explicit. Please make sure you put them in a separate paragraph and not as an afterthought or component of a paragraph on other subjects. Please clearly identify them as a request for information.
- To obtain information you don't have to file a request under either of the Acts. You can simply write and ask a question. However, this means that you do not have the statutory rights which the Acts give in terms of access to information and response times. If you do want to simply ask a question and not have your request processed under the Acts, please say so clearly in your letter.

- *Why are all requests for recorded information put through the bureaucratic process of being assigned a case number, a due date, an acknowledgment and so on?*

So that there is an audit trail. The Council needs to be able to prove that every request which has been made for recorded information, and which falls under the Act, has been processed in accordance with the law. Less formal approaches have led to misunderstandings in the past. Since this formal process has been in place we have achieved 100% compliance.

- *Today is (eg) May 1. I want to request some letters which the council will send (eg) between June 21 and July 14.*

You will have to file your request for these letters on July 14. You can only request recorded information which the Council holds at the time your request is filed. You cannot use the FOIA to request information from the future because it does not exist.

- *The information I am requesting is in the public domain so I have a right to it immediately.*

The expression 'public domain' in English law refers to copyright and ownership. Works in the **public domain** are those whose intellectual property rights have expired, have been forfeited, or are inapplicable. It means 'not subject to any copyright or patent restrictions'. If a work is in the public domain it does not mean anyone has any duty to supply it on request, still less in any particular time period.

Duties of public bodies to provide information are defined in law and statute including the Freedom of Information Act 2000. Certain agencies have defined duties to supply information and publications, which may or may not be public domain.

If you request recorded information held by the Council, your request will be processed under FOIA whether the information is in the public domain or not. If it is not public domain any copyright restrictions on further publication or duplication will still apply.

- *I want to get all the information the Council holds about me.*

You cannot as a matter of law request information about yourself under FOI. This must be done as a Subject Access Request under the Data Protection Act.

- *I did not ask for an Internal Review, so why are you doing one?*

Because you expressed written dissatisfaction with a decision. This counts as a request for internal review and will be processed as such.

- If you do not get an acknowledgment within one week of submitting your FOI or Subject Access Request, please write to the Clerk again in case it has gone astray.
- Material of various kinds is exempt from FOI. For details see the Act or ICO publications.
- The Council will not normally supply advance copies of material it intends later to publish.

ICO and Secretary of State Guidance Extracts

"For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff Any letter or email to a public authority asking for information is a request for recorded information under the Act. Almost anything in writing which asks for information will count as a request under the Act. " (ICO - The Guide to Freedom of Information)

"The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it. " (ibid)

"Copyright does not act as a statutory bar to disclosure for the purposes of section 44 of FOIA. This is because section 50 of the CDPA provides that where the copying or publishing of information is specifically authorised by an Act of Parliament copyright will not be infringed. Providing information in response to a request made under FOIA constitutes an act specifically authorised under an Act of Parliament. Consequently disclosing information under FOIA will not infringe copyright.

"Copyright remains after disclosure

"14. However, copyright will still apply to the information once it has been disclosed under FOIA. The person who receives the information under FOIA is still obliged, by law, to respect the rights of the copyright owner. If they do not, the copyright owner can seek damages or an injunction in the same way as they could for any infringement of copyright.

"15. So, although the disclosure under FOIA does not carry any restrictions, the restrictions imposed on the further use of that information by the CDPA still apply."

(ICO: Intellectual property rights and disclosures under the Freedom of Information Act. 20140205 Version:2.0)

"The Commissioner has issued guidance regarding the time limits on carrying out internal reviews. The Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days."

(ICO, 27 November 2014)

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application."

(Secretary of State for Constitutional Affairs, Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000. Issued under section 45 of the Act. November 2004)

version control

version 1: 8 January 2014

version 2: 18 October 2014.. Added 3 x Q&A covering future queries, reason for uniform process, explanation of 'public domain' and copyright, ICO quote on copyright.

version 3: 28 October 2014. Added clarification of the method of calculation of '20 working days'.

version 4: 5 Jan 2014. Revised internal review entries to reflect and quote ICO good practice guidelines.

version 5: 12 Jan - Revised internal review entries to reflect Code of Practice #45, para 38.