

# KENNINGTON COMMUNITY COUNCIL

## ACCESS TO INFORMATION HELD BY THE COUNCIL

This Policy was adopted by Kennington Community Council (the "Council") at its meeting held on 10<sup>th</sup> March 2021.

### 1. Introduction

- 1.1. This Policy is to be read in conjunction with guidance published from time to time by the Information Commissioner's Office.
- 1.2. The **Freedom of Information Act 2000** (the 'Act' or the 'FOIA') provides public access to information held by public authorities. The Act does this in two ways:
  - public authorities are obliged to publish certain information about their activities; and
  - members of the public are entitled to request information from public authorities.
- 1.3. The **Environmental Information Regulations 2004** (the 'Regulations' or the 'EIR') provide public access to environmental information held by public authorities. The Regulations do this in two ways:
  - public authorities must make environmental information available proactively; and
  - members of the public are entitled to request environmental information from public authorities.
- 1.4. Kennington Community Council is a Public Authority for the purposes of the Act and the Regulations.
- 1.5. The FOIA and the EIR cover all recorded information held by the Council. They are not limited to official documents and cover, for example, drafts, emails, notes, recordings of telephone conversations and video recordings. Nor are they limited to information created by the Council, so the legislation also covers, for example, letters received from members of the public, although there may be a good reason not to release them.
- 1.6. The FOIA and the EIR do not cover information that is in someone's head. If a member of the public asks for information, the Council only has to provide information it already has in recorded form. It does not have to create new information or find the answer to a question from someone who may happen to know it.
- 1.7. The FOIA covers information that is held on behalf of the Council even if it is not held on the Council's premises. Similarly, although individual Councillors are not public authorities in their own right, they do sometimes hold information about Council business on behalf of their Council.
- 1.8. Unlike the FOIA, the EIR do not explicitly exclude information that the Council holds solely on behalf of another person or body. The EIR say that any information that is in the Council's possession that the Council has produced or received is considered to be 'held'.
- 1.9. Information held in non-work personal email accounts may be subject to disclosure under FOIA or EIR if it relates to the official business of the Council. All such information which is held by someone who has a direct, formal connection with the Council is potentially subject to FOIA or EIR regardless of whether it is held in an official or private email account. If the information held in a private account amounts to Council business it is very likely to be held on behalf of the Council.
- 1.10. Certain types of information may be non-disclosable under the exemptions provided in the FOIA or the exceptions provided in the EIR. The requirements of the UK General Data Protection

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Regulation (UK GDPR), tailored by the Data Protection Act 2018, apply to information held by the Council.

- 1.11. The Council may make a reasonable charge for provision of information which may include the actual costs of staff time taken to locate information and put it in an appropriate format for disclosure and the disbursement costs in transferring the information to the applicant.
- 1.12. The presence of copyright, including third party copyright, does not prevent the disclosure and communication of information in response to FOIA or EIR requests, nor does publishing information on a publication scheme.
- 1.13. The FOIA and EIR do not give people access to their own personal data (information about themselves). If a member of the public wants to see information that a public authority holds about them, they should make a Data Protection Subject Access Request.

## 2. Procedures

- 2.1. The Council shall provide proper advice and help to any member of the public seeking information.
- 2.2. A request for information under the Freedom of Information Act 2000 must be made in writing; a request under the Environmental Information Regulations 2004 need not be in writing.
- 2.3. The date on which a request is received is the day on which it arrives or, if this is not a working day, the first working day following its arrival. Non-working days include weekends and public holidays.
- 2.4. The Council shall provide the information requested promptly and in any event not later than the twentieth working day following the date of receipt.
- 2.5. The Clerk shall agree with the Chair of the Council whether a request is valid and if so whether it will be managed under the FOIA or under the EIR. The Council may seek external advice in determining the validity and management of a request or in responding to a request.
- 2.6. The Clerk shall agree with the Chair of the Council whether requested information is freely accessible (for example, through the Council's Publication Scheme or website), whether it is available in the requested form, whether a Refusal Notice needs to be served in respect of all or part of the requested information, what charges if any will be levied and the timescale for delivery of the information.
- 2.7. The Clerk shall acknowledge a request in writing within five business days of receipt of the request, inform the requester whether the request will be considered under the FOIA or under the EIR, and provide a date by which it is anticipated the information will be provided.
- 2.8. If the Clerk considers that the applicant has not provided their real name the public authority can make the applicant aware it does not intend to respond to the request until further information is received from the applicant. For example, this may be the case when an applicant appears to have used a pseudonym rather than their own name.
- 2.9. There may also be occasions when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the Council can conduct a search for it. In these cases, the Council may ask for more detail to enable them to identify the information sought.
- 2.10. Where the Council asks for further information or clarification to enable the requester to meet the requirements of either FOIA or EIR, the 20 working day response period will not start until a satisfactory reply constituting a valid request is received. Letters should make clear that if no

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response is received within two calendar months the request will be considered closed by the Council.

- 2.11.** If it is not reasonably possible to provide the information within 20 working days of receipt of the request, the reasons for the delay and a target date shall be provided which must not exceed 40 working days.
- 2.12.** If a Refusal Notice is issued in respect of all or part of the requested information it shall state that the Council is relying upon an exemption in the case of the FOIA or an exception in the case of the EIR and why it applies. Details of the Internal Review procedure shall be enclosed with the Notice and the right of appeal to the Information Commissioner.
- 2.13.** If a Refusal Notice is issued in respect of all or part of the requested information for any of the following reasons;
- i. The cost of complying with a request under the FOIA will exceed £450
  - ii. The Council is unable to identify the information despite every reasonable attempt to do so
  - iii. The Council considers the request to be vexatious (ie the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation) in accordance with its adopted policies
  - iv. The information has already been provided or is freely accessible without reference to the Council

then details of the right of appeal to the Information Commissioner shall be provided.

- 2.14.** If the requested information cannot be found within the Council records then the applicant shall be advised, accordingly, as soon as the search is completed. Details of the Internal Review procedure shall be provided and of the right of appeal to the Information Commissioner.
- 2.15.** The Council shall maintain a record of all FOIA and EIR requests. A Freedom of Information and Environmental Information Request Form is available either from the website or the Clerk.

### 3. Address for correspondence

All requests for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 should be sent to

**The Clerk to the Council, Kennington Community Council, PO Box 606 Ashford Kent TN23 9YF**

or by e-mail to [clerk@kenningtoncc.gov.uk](mailto:clerk@kenningtoncc.gov.uk)

### 4. Revision History

Version	Date	Comments
Draft v0.1	14 Feb 2021	Initial draft for comment