

REPORT OF THE MONITORING OFFICER AND SOLICITOR
TO THE EXECUTIVE
3RD FEBRUARY 2006

Freedom of Information Act 2000 and
Environmental Information Regulations 2004 –
Charging Policy

1.0 Introduction and Report Summary

- 1.1 As Members will be aware, the above legislation came into force on 1st January 2005 and gives the public the right to request information from the Council which then has an obligation to respond promptly and within 20 working days by either disclosing the requested information or refusing to disclose on the basis of one of the statutory exceptions.
- 1.2 The 2000 Act gives greater public access to general information held by Public Authorities, like the Council and the 2004 Regulations provide a specific statutory regime for the disclosure of environmental information. Although “the right to know” is similar in both cases, the provisions are not identical and this is relevant when considering the issue of charging the public for the information sought.
- 1.3 The Council now has the benefit of one year’s experience of dealing with this legislation and 12 months on the time is right to decide whether or not the Council should seek to charge for the information in the future.
- 1.4 The Contact Officer for this report is David Quayle, Monitoring Officer and Solicitor [telephone number: 01235 540312].

2.0 Recommendations

- 2.1 *To note that there is currently no charging Policy in respect of “right to know requests for information and to consider whether such a Policy should be approved by the Council.*
- 2.2 *If Members are of the opinion that a Policy should be put into place, then the Executive is invited to consider the draft Policy attached at Appendix A and to recommend its adoption by the Council.*

3.0 Relationship with the Council’s Vision, Strategies and Policies

- (a) This report relates to the Council’s Vision and the aim which seeks to strengthen local democracy and public involvement through access to information.
- (b) This report is relevant to the Council’s approval of a budget for 2006/07.

4.0 Background Information

- 4.1 As Members know, the Council has a Vision to build and safeguard a fair, open and compassionate community with one of its aims being to strengthen local democracy and public involvement through freedom of information. The Council therefore welcomed the Freedom of Information Act 2000 and the related Regulations made 4 years later and have now had 12 months experience in dealing with requests from the public.
- 4.2 The Scrutiny Committee received a report on 14 June 2005 (report No.12/05) on this subject and also a six-month review of the number and types of requests received on 15th December 2005 (item 12). Although the number and types of request have not been particularly difficult to deal with, they can be time consuming and deflect staff from dealing with other particular issues set out in their Service Plans. In general, the Council has not received more than one request from any particular person but there is one local resident who has submitted numerous requests in the last 12 months under both pieces of legislation.

4.3 As the Council is about to consider its budget for the next financial year and approve new fees and charges for the provision of its services, it is only right that the Council should consider whether to start charging members of the public for dealing with requests for information, whether they be under the 2000 Act or the 2004 Regulations. The charging provisions are a little different between the more general 2000 Act and the more specific 2004 Regulations and these are dealt with below.

5.0 The Powers to Charge for Information

5.1 The Environmental Information Regulations 2004 are self-contained and Regulation 8 deals with charging for environmental information made available following a request. The Council has the power to charge the applicant for making the information available subject to 2 exceptions:-

- (a) there is no charge for allowing an applicant to look at public registers or lists containing environmental information held by the Authority and
- (b) similarly, there is no charge for an applicant who wants to examine the information requested at the Council offices.

5.2 Any charge under the 2004 Regulations must be a reasonable one and the Council can require advance payment which must be made by the applicant within 60 working days of being asked to pay for the information requested. If the Council do invoke a charging system, then it will be under an obligation to publish a schedule of charges and information on the circumstances in which a charge may be made or waived.

5.3 The position is not quite so straightforward when dealing with the more general 2000 Act and the related Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004. The first point to make is that under this legislation, the Council has the ability to refuse a request if the estimated cost of compliance exceeds the appropriate statutory limit which is currently set at £450. The Regulations indicate how the estimate is to be calculated. The draft Policy indicates that there should be a presumption in favour of refusing a request where the statutory threshold is exceeded but leaves discretion to the officers to grant an application in exceptional circumstances e.g where the estimate is only marginally over the £450 threshold.

5.4 Section 9 of the Freedom of Information Act 2000 and Regulations 6 and 7 of the 2004 Fees Regulations make it clear that the Council has the power to charge a fee for an FOI request, but it must not exceed the maximum determined by the Council in accordance with the requirements of the Regulations. The Council can aggregate the costs it reasonably expects to incur in informing the applicant whether it holds the information and the cost of communicating the information to that person. These costs can include the cost of reproducing any document, postage or similar costs but the Council cannot take into account the costs which are attributable to staff time expected to be spent on dealing with the request. Thus, the scope for recovery of the Council's full costs is limited.

5.5 The draft Policy at Appendix A takes into account the above statutory provisions and Members are invited to recommend to the Council the adoption of the Policy which should be implemented as soon as possible and in any event by the beginning of the next financial year.

DAVID M QUAYLE
MONITORING OFFICER & SOLICITOR

Background Papers: None

VALE OF WHITE HORSE DISTRICT COUNCIL

FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION CHARGING POLICY

1.0 Introduction

- 1.1 The Vale of White Horse District Council (“the Council”) has a Vision to build and safeguard a fair, open and compassionate community and has a number of stated aims designed to turn this Vision into action. The Council aims to provide high quality services to the people of the Vale and is committed to strengthening local democracy and freedom of information.
- 1.2 The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 set out a national framework to regulate public access to information held by the Council. The legislation allows Public Authorities; like the Council to charge applicants who request information and the Council has decided that a Charging Policy should be introduced to cover applications for information in the future.
- 1.3 This Policy was considered by the Executive on 3rd February before being approved by the Council on 22nd February 2006. The Policy comes into effect on 1st April 2006.

2.0 Policy Statement

- 2.1 **The Council aims to strengthen local democracy and public involvement to access to information and therefore welcomed the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 when they came into force on 1st January 2005. The Council acknowledges there is a duty to applicants who exercise their “right to know” to respond to their requests in accordance with the legislation. This Policy therefore applies to all applications made under the 2000 Act or the 2004 Regulations.**
- 2.2 **As and when the Information Commissioner produces Codes of Practice or other Guidance relating to charging applicants for requesting information, the Council will normally follow the Commissioner’s Codes or Guidance unless there are exceptional circumstances justifying a departure from the recommended approach. Any Code or Guidance issued by the Commissioner will be taken into account when dealing with specific charging issues.**
- 2.3 **The Council recognise that requests for information can be diverse and varied and therefore need to be dealt with by the relevant Service Areas subject to obtaining advice from the Council’s Monitoring Officer on any legal issues raised by the application. The Strategic Directors will have overall responsibility for compliance in their relevant Service Areas, but it will be the responsibility of the Deputy/Assistant Directors to deal with day-to-day requests for information which are relevant to the services they deliver. The adoption of this Policy should be regarded as giving both the Strategic Directors and the Deputy/Assistant Directors the delegated power to deal with such applications including the power to charge or waive charges in accordance with the legislation and the provisions of this Policy.**
- 2.4 **Assistant/Deputy Directors shall normally refuse a request for information under the Freedom of Information Act 2000 if the estimated cost of dealing with that case exceeds the statutory maximum set out in Regulations made by the Secretary of State. However, this presumption of refusal is not irrebuttable and may be overridden if the Deputy/Assistant Director is of the opinion that the circumstances warrant a departure from the normal approach.**

- 2.6 Subject to the statutory restrictions set out in legislation, the Council will normally charge for requests for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and will publish the relevant charges as soon as possible after the Council's annual budget meeting in February each year. The Strategic Director who is for the time being designated as the Chief Finance Officer of the Council shall determine the charges both for the Freedom of Information and Environmental Information applications, following consultation with the Council's Monitoring Officer.**
- 2.8 This Policy shall come into effect on 1st April 2006 and shall be reviewed at least once every 4 years and also when circumstances warrant it.**
