

## **Great and Little Whelnetham Parish Council**

### **FREEDOM of INFORMATION POLICY and PROCEDURE for HANDLING REQUESTS for INFORMATION**

The Parish Council has adopted an Information Commissioner's Office Model Publication Scheme. This represents the Council's commitment to release information in a recognised format.

A guide detailing the information that is routinely published and how this information can be accessed is available from the Clerk as a hard copy.

1. Verbal requests for information under the Freedom of Information Act 2000 (FOI) will be requested to be put in written form (email will be acceptable) giving the name, correspondence address and details of information required. Information requested under the Environmental Information Regulations Act 2004 (EIR) do not necessarily need to be in writing, although it is the Council's own policy that all such requests should be in written form. Requests for information do not need to refer to FOI or EIR.
2. The Parish Council shall provide proper advice and help to any member of the public seeking information.
3. The Clerk shall agree with the Chairman of the Parish Council whether the requested information is freely accessible, 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 and what charges will be levied and the timescale for delivery of the information.
4. The Clerk shall acknowledge a request in writing within three days of receipt of the request and provide a date by which it is anticipated the information will be provided which shall be within 20 working days in normal circumstances. If it is not reasonably possible to provide the information within 20 working days of receipt of the information, the reasons for the delay and a target date shall be provided which must not exceed 40 working days.
5. A fee notice will be issued (if applicable) confirming that the information is held and giving an estimate of the cost of providing the information within a limit of £450. The Council may refuse requests that exceed this limit in which case a refusal notice will be issued (see Policy Reference 6 and 7). Where a fee is to be charged no information will be provided until after the fee has been received, the 20-day period will be extended by up to three months awaiting payment. After the fee has been received, a response will be given within 20 days.
6. If a Refusal Notice is issued in respect of all or part of the requested information it shall state that the Parish Council is relying upon an exemption 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.
7. A Refusal Notice may be issued in respect of all or part of the requested information for any of the following reasons:
  - i. The cost of complying with the request will exceed £450
  - ii. The Parish Council is unable to identify the information despite every reasonable attempt so to do.
  - iii. The Parish Council considers the request to be vexatious (i.e. to cause harm and/or annoyance rather than to obtain information)

iv. The information has already been provided or is freely accessible without reference to the Parish Council then details of the right of appeal to the Information Commissioner shall be provided.

8. If the requested information cannot be found within the Parish Council records then the applicant shall be advised, accordingly, as soon as the search is completed. Details of the Internal Review procedure (see Appendix) shall be provided and of the right of appeal to the Information Commissioner.

9. Provided the fee is paid and no exemptions apply the Council are obliged to disclose the information.

10. The Parish Council shall maintain a record of FOI requests.

11. Appendix 1 sets out further details of how the Parish Council will deal with vexatious requests, Section 14 of the Freedom of Information Act 2000, and outlines the internal review procedure.

## APPENDIX 1

### Internal Review

If you are unhappy with the way your request has been dealt with you may request an internal review. This will be carried out within 20 working days of the request for a review being received. If you remain unhappy with the result of the review you can ask the Information Commissioner to look at your concerns. We will provide you with details of the internal review process when you request it. The process will vary depending on the type of request and who is available to review the process within the timescales.

### Vexatious Requests

Whilst Great and Little Whelnetnam Parish Council wishes to be open and transparent and to provide as much information as possible about the work it does there are occasions when it might be necessary to decide if a request is “vexatious” within the meaning of the legislation. There have been a number of legal cases which have helped to clarify what is meant, legally, by “vexatious” and which have stated that parish councils have limited resources and that their obligations under the legislation must be proportionate to those resources. Public authorities do not have to comply with vexatious requests. There is no requirement to carry out a public interest test or to confirm or deny whether the requested information is held. **The key question is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.** There is no exhaustive list of circumstances. Every case is unique and judged within the context and history of that specific situation. The following are considered as “Vexatious” Indicators

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent/overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- No obvious intent to obtain information
- Futile requests

### Process we will follow to determine if a request is vexatious

The Parish Clerk deals with all requests for information on behalf of the Parish Council. If a request is considered to be potentially vexatious the Clerk will prepare a summary setting out the context and history to the request. This summary will be reviewed by the Parish Council.

### The review

The following will be considered:

- The purpose and value of the request
- Whether the purpose and value justify the impact on the public authority
- The context and history so, for example, if there has been a long and frequent series of requests the most recent request, though not obviously vexatious in itself, will contribute to the aggregated burden

- Have there been numerous follow-up enquiries no matter what is supplied? This will be balanced against how clear our responses have been, has contradictory or inconsistent information been supplied or is a legitimate grievance being pursued?
- Whether there are alternatives to the vexatious route. If it is too expensive then section 12 of the Freedom of Information Act (costs in excess of £450) will be used. The Information Commissioner permits the total costs for all requests from one person (or several acting in concert) to be aggregated during a period of 60 days so long as they are requests for similar information
- Is this a round robin, a “fishing” expedition or part of an orchestrated campaign? None of these make it vexatious but are factors.

### **Final Warning**

If, having considered all of the above, the Parish Council thinks there is a case for treating the request as vexatious then consideration will be given to a “final warning”. This is a letter, or email, to the person making the request explaining the impact the request(s) are having and asking that their behaviour be moderated. This “final” warning will not be appropriate in all cases but, if it is possible that the person making the request has not appreciated the impact of what they are doing, then it may assist.

### **Advice and Assistance**

In addition, the Parish Council may want to ask the person making the request whether advice and assistance would help in clarifying what exactly they wish the organisation to provide. Again, this may not be appropriate in every circumstance but will be considered.

### **Report to the Parish Council**

The history of the matter will go forward as part of a report to the Parish Council setting out the evidence and reasoning behind the recommendation to propose that the request be treated as vexatious. The decision to declare a request vexatious will be taken by the Parish Council. This decision should be taken within 20 working days of receipt of the request. This time limit should be achievable in normal circumstances. However, if there is no meeting scheduled within that timescale then the decision will be formally delegated by the adoption of this policy to the Chairman of the Council. In a small parish such as ours it is not possible for there to be an internal review process once the Parish Council has reached the decision that the request is vexatious. Under section 14(1) of the Freedom of Information Act the refusal notice will set out our internal review procedure and the right of appeal to the Information Commissioner’s Office. However, under section 17(6) if the authority has issued a previous refusal notice for a vexatious request (and it would be unreasonable to provide another one) it is not necessary to do so. This will be done where the complainant has already been warned that further requests on the same, or similar topics, will not receive any response. Please note that if a request is found to be vexatious and further requests are received on the same topic no response will be provided.

### **Review of Policy**

This information policy is part of Great and Little Whelnetham Parish Council’s governance structure and will be reviewed as necessary and when legislation (or legal cases) require it to be updated to comply with the law.