

WALTHAM PARISH COUNCIL POLICY FOR DEALING WITH VEXATIOUS OR REPEATED REQUESTS FOR INFORMATION

1.0 Background

- 1.1 The Freedom of Information Act (referred to in this policy as “the Act”), which came into force for local councils in January 2005, places a general duty on all public authorities to give the public access to releasable information, which is held on record. This council has previously adopted a Scheme of Publication, which explains how it will provide information, which can be released under the Act.
- 1.2 This council, by adoption of this policy, reaffirms its commitment to open and transparent local government but will remain conscious of its responsibility to ensure the effective use of its resources, which are funded by the council tax payers of the parish of Waltham, together with the care and protection of its staff.
- 1.3 The Information Commissioner is the person appointed by Government to oversee the application of the Act and this policy has been prepared using the guidance issued from that source to all public bodies.
- 1.4 This council acknowledges that most members of the public will exercise their rights sensibly and responsibly, however it recognises there is a risk that some individuals, and perhaps some organisations, may seek to abuse these rights by making requests which are manifestly unreasonable and which would impose substantial burdens on the financial and human resources of this council. Such cases may be interpreted as being Vexatious or Repeated Requests, and may well arise in connection with a grievance or complaint which an individual is pursuing against this council.
- 1.5 Section 14(1) of the Act states that the general right of access to information “does not oblige a public authority to comply with a request for information if the request is vexatious”. However this council accepts the guidance from the Information Commissioner to the effect that it is important to note that it is the request, rather than the requester, which must be viewed as being vexatious. The council further accepts the Information Commissioner’s guidance that the useful test, which a public authority should apply in determining if it will comply with a request for information in such circumstances, is to judge whether or not the information would be supplied if another person, unknown to the authority, requested it.
- 1.6 The term “vexatious” used in this policy is intended to have its ordinary meaning and there is no link with legal definitions from other contexts.

2.0 Identification of a request as being vexatious or repeated

- 2.1 The council accepts that there is a need to distinguish between someone who makes a number of requests for information, because they genuinely require that information or believe that there is an issue which is being suppressed, and those who simply wish to cause disruption and distress. The council further accepts that members of the public may be frustrated or aggrieved and that it is important that all requests for information are considered individually.

2.2 It is the Council's view that requests could be both repeated and vexatious. This will be a matter of judgement for the council, which will take into account the effect of the requests and whether or not they are designed to subject the council to inconvenience, harassment and expense.

2.3 There are a number of ways in which the council may identify individual requests as being vexatious. The Information Commissioner advises that the process is a balancing exercise, taking into account the context and history of the request and deciding whether or not the request is likely to cause unjustified distress, disruption or irritation. In making its decision the council will be informed by the following list, which is not exhaustive:

- Could the request be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction? However if cost is the only or main reason for potential refusal, the council can also rely on Section 12 of the Act, which provides an exemption where the cost of meeting the request exceeds the appropriate limit, as specified by the Information Commissioner.
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value? Before reaching such a conclusion the council will carefully consider any explanation, which the requester gives as to the value in disclosing the information.
- Is it a repeated request for the same information from the same person, made within an unreasonable timescale and where the information held by the council has not changed?

2.4 Additionally the council will take the following factors into account:

- The requester has explicitly stated that it is his or her intention to cause the council the maximum inconvenience through making their request;
- The council has independent knowledge of the intention of the requester, requesters, an organisation or campaign group to cause it the maximum inconvenience through making requests;
- Where much of the information requested falls within an exemption(s) under the Act and requires extensive editing, leaving the remaining information to be meaningless or of no real use to the requester. This will depend on what has been requested and whether or not the requester is (or becomes) aware of the likely result. Again, the council will give proper consideration to any explanation which the requester offers as to the value in disclosing the information;
- The request is for information which the requester clearly understands to be exempt;
- The request can fairly be characterised as one, which a reasonable person would describe as obsessive or manifestly unreasonable. However the council will take care not to be judgemental without good cause and dismiss an apparently tedious request, which in fact relates to a genuine concern. The council will, in making this determination, take into account frequent prior contact with the requester or if the request forms part of a pattern of successive requests for information; and
- Repeated unwillingness by the requester to accept that all available documents have been provided.

- 2.5 A request, which contains abusive or offensive language, or is written in a threatening tone, will not automatically render the request vexatious. This will not necessarily forfeit the requester's rights under the Act provided there has been a genuine request for information.
- 2.6 The Act requires requesters to make requests for information in writing, whether by letter or e-mail, and to provide their name and address for correspondence. A request submitted using a pseudonym is not a proper request and will be refused. The council will not attempt to verify the identity of any such requester.
- 2.7 Where the Clerk is of the opinion that a request for information may be vexatious or repeated, the matter will be referred to the Grievance Committee for determination.

3.0 Determinations

- 3.1 In determining if a request harasses the council or causes distress to staff, the council will be guided by the Information Commissioner who has stated that "the focus should be on the likely effect of the request (seen in context), not the requester's intention". Relevance will be placed on "the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints". In making the determination the council will be guided by the outcome of *Gower V Information Commissioner and LB Camden EA/2007/0114 (13 May 2008)*.

Explanation: In the above case the requester made various requests and complaints about the alleged incompetence of the council in ongoing correspondence. He made personal accusations against a particular member of staff and attempted to identify their spouse through FOI requests and other means. In finding the latest request vexatious, one factor the Tribunal took into account was that the correspondence "would likely have been seen by any reasonable recipient as hostile, provocative and often personal" and that "the requests are likely to have been very upsetting to the staff and that they....are likely to have felt deliberately targeted and victimised".

- 3.2 The council accepts that disclosure of certain information may cause embarrassment or distress but that does not necessarily make such a request vexatious.
- 3.3 In determining if complying with a request for information will impose a significant burden in terms of expense and distraction, the council will consider not only the cost but also the impact such compliance will have on the everyday work of staff. The council has the power under Section 12 of the Act to refuse a request if finding and extracting the relevant information will cost more than the set limit (currently £450). Additionally the council will exercise its ability to combine the costs of requests from one person, or from several people acting together) during a 60 day working period, provided the request(s) relate to similar information.

- 3.4 In determining if a request is designed to cause disruption or annoyance, the council will take into account any statement made by the requester that it is their explicit intention to cause maximum inconvenience to the council.
- 3.5 In determining if a request lacks any serious purpose or value, the council will take into account other aspects of the request, such as whether or not the request is obsessive, harassing or burdensome.
- 3.6 In determining if a request is repeated, identical or substantially similar, the council will consider if:
- It is made by the same person as a previous request;
 - It is identical or substantially similar to the previous request; and
 - No reasonable interval has elapsed since the previous request.

Where a request is received which is identical to a previous request and it seeks the same information, which has already been provided or refused, the council will regard such a request as being repeated.

- 3.7 In determining if a reasonable interval has passed since information was last released, the council will consider the circumstances of each request and be informed by:
- How likely it is that the information may have changed in the interval;
 - How often council records are updated; and
 - Any advice previously given to the requester as to when new information might be available.
- 3.8 The council will not tolerate unacceptable behaviour by anyone, which causes, or may cause, distress to staff. Persistent behaviour of this kind may adversely affect the ability of the council to serve the parish of Waltham and, should such a circumstance arise, the council may have to restrict, suspend or terminate contact with that individual or individuals. The council's policy on restricted or withdrawn contact is given in section 5 of this policy.
- 3.9 The council may also exercise its right to seek legal advice on any request for information, which may result in the requested information not being provided within the 20 working day period. The requester will be advised in writing if any such advice is being sought.

4.0 Refusing a request

- 4.1 When refusing a vexatious or repeated request, the council will issue a refusal letter. This will be done not later than 20 working days after the request is received. The following is the process the council will apply in such circumstances:
- Confirm or deny if the information is held (unless to do so would constitute disclosure of exempt information);
 - Explain why the request is considered to be vexatious or repeated;
 - Provide the legal basis for the refusal, i.e. the section of the Act;
 - Outline the council's appeals procedure; and
 - Provide details of the right to appeal to the Information Commissioner.

The council is not obliged to provide a letter of refusal in the case of repeated requests by an individual or group of people, provided a similar letter has been previously issued.

5.0 Restricted or withdrawn contact with a member of the public or group of people

5.1 This council reserves the right to restrict or withdraw contact with a member of the public, or group of members of the public, only where it is satisfied that this necessary to protect the council and its staff. In the event that such a decision is taken, the person (or people) involved will be advised in writing as to why such a decision is made, what the restrictions are, how long that will be in place and what can be done to have the decision reviewed. This council is firmly of the opinion that a permanent restriction will be seldom helpful to all parties but it must balance all of its responsibilities.

5.2 The council will continue to provide one form of contact, which will be by way of Royal Mail but reserves the right not to respond.

5.3 Should a situation arise where the council has to restrict or refuse contact with an individual or group of people, it will be guided by the principle that any restriction will be appropriate and proportionate. The following are examples of the types of restrictions, which may be used, but this list should not be viewed as being exhaustive:

- Placing time limits on telephone conversations and personal contact with the Clerk or councillor members;
- Restricting the number of telephone calls that will be taken or e-mails or letters responded to (for example one call, on one specified morning/afternoon of any week);
- Limiting contact to one medium (e.g. telephone, letter, e-mail);
- Limiting contact to one named employee only;
- Asking the person, or persons involved, to enter into a written agreement about their future conduct in terms of contact with the council;
- Requiring any personal contact to take place in the presence of a witness;
- Refusing to acknowledge any contact, other than where statutory rights exist;
- Banning a complainant from some or all of the Council's premises; and
- Referral to the Police where the council believes a criminal offence has been committed or threatened.

6.0 Adoption

6.1 This policy was adopted by Waltham Parish Council Parish Council on 7th June 2011.