



## Information Rights Policy

One Council One Team

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## 1. POLICY STATEMENT

SMBC is committed not only to transparency, but also to leading the charge towards full disclosure with information we are responsible for. The Council recognises, accepts and will respect the rights of individuals and organisations to make requests for personal information, Freedom of Information and Environmental Information Regulations requests respectively.

## 2. Subject Access Request (SAR)

Requests from individuals whose personal information is processed by SMBC is known as a SAR. The right to make such requests is enshrined in the UK GDPR and DPA 2018.

The following rights of the individual are recognised by this policy:

- The right to be informed
- The right of access
- The right to rectification
- The right to erasure or removal of information
- The right to restrict processing
- To have data returned in a machine-readable format
- The right to object
- The rights of individuals where automated decision-making and profiling is carried out by the Council

Complying with requests to enforce these rights is subject to exemptions provided in the relevant legislation. It is the DPO's prerogative to determine when these rights are enforceable or otherwise, subject to legislation, amended legislation and directives from the Information Commissioner's Office. The Council will also take into consideration the recommendation of the Caldicott Guardian for safeguarding, health and medical information.

All SARs must be responded to within one calendar month of receipt, with the date of receipt counted as day one. It is therefore imperative that Council services prioritise SARs.

## 3. Registering a SAR

Requests for a SAR may be made verbally or in writing to any officer of SMBC. Where possible, attempt should be made to capture the information on the [SAR form](#) and members of the public will be guided towards making the request via our online 'my Sandwell' portal.

Once this request is received, the time begins to count down for one calendar month on the date of receipt. The officer receiving this request must immediately pass on the details to the Governance team to be logged, clarified and allocated to the correct service area

for processing. SARs should not be processed without the knowledge of the DPO or the Governance team working on their behalf.

The receiving officer must forward the SAR to the Governance team no later than 2 working days from the date received.

#### **4. Response Time and Format for a SAR**

All SARs must be responded to within one calendar month, using a Governance approved SAR response format, and the time begins to count on the date of receipt.

Sometimes it is necessary to seek clarification from the requester for what information is expected and the intended use. This should be done at the earliest opportunity. When this happens, the requester should be given 14 days to re-submit their request. The count down to one calendar month will resume from the point of clarification receipt at the Council.

Depending on the nature and scope of the SAR, it may be necessary to seek an extension from the requester. Extensions, redactions, information exclusions or refusals can only be approved by the DPO and must be communicated in writing to the requester at the earliest opportunity and before the one calendar month response time lapses.

#### **5. Processing a SAR**

Responsibility for collating the information required for a SAR response, lies with the Directorates. The Governance team on behalf of the DPO, will provide the support required to enable Directorates understand what is required, determine whether extension, redaction, information exclusion or refusal is required, provide advice to balance the rights of the requester and other individuals, query the substance and content of the information haul, draft an appropriate response and determine the medium of return used to get the response to the requester.

Directors should designate a person or team as the focal point for receiving all SARs allocated to the Directorate (inflow) and sending out the response (outflow). If a SAR is wrongly allocated to a Directorate, the focal point must return the SAR to the Governance team no later than 2 working days following the wrong allocation.

#### **6. Identification of Requester**

Due diligence should be applied to ascertain the identity of a requester before information is released to them. Request for identity should however not hold up the process of information collation. Depending on the category of information for release, it may be necessary to physically hand over the information haul to the requester. In such cases the Council officer must use a SAR handover form.

A SAR can be made for personal information of a minor, person without capacity to consent, or the deceased. For a person to have capacity, they must be able to comprehend, analyse and retain the information necessary to make informed decisions.

The identity checks in these cases should be expanded to satisfy the Council's release criteria. Identity documents required from a requester are as follows:

**7. SAR made by Individuals for Themselves**

Nationally accepted photo identification.

**8. SAR made on behalf of a Minor (Data Subject under the age of 13)**

Nationally accepted photo identification and proof of parental or guardian right to make the request and receive the response. This might take the form of birth certificates, proof of residence or a document issued by a competent court of law in the UK and European Union.

The releasing officer must exercise caution to ensure that parents or guardians restrained by court injunction or, are currently subject to safeguarding orders, do not take delivery of the information.

**9. SAR made on behalf of an Adult with Capacity to Consent –**

Consent or authorisation letter from the individual. Effort must be made to ascertain the legitimacy of the organisation or authorised person making the request.

**10. SAR made on behalf of an Adult without Capacity to Consent –**

Nationally accepted photo identification and proof of legal right to make the request and receive the response. For example, a lasting power of attorney.

**11. SAR made for Personal Information of a Deceased –**

Nationally accepted photo identification and proof of legal right to make the request and receive the response. For example, probate.

**12. Service Charge for a SAR**

In accordance with the provision of UK GDPR and the DPA 2018, the Council does not charge for SARs. Data protection law however, permits the Council to apply a reasonable administrative charge if the request is repetitive, manifestly unfounded or excessive in nature.

The decision to apply an administrative charge can only be taken by the DPO or any officer acting on their behalf, after considering available evidence. Notwithstanding, the decision to apply an administrative charge must be made before the end of day 14.

The SAR will be closed if payment is not received after 21 days of the Council's notice to the requester. The time will resume upon receipt of the administrative charge.

**13. Refusing a SAR**

The Council may refuse to act on a SAR for one or more of the following reasons:

- The requester has made more than two repetitive requests within the current financial year
- The request is judged to be manifestly unfounded
- The request is excessive in nature
- There are legal prohibitions around the release of the requested information
- Releasing the information will cause harm and distress to one or more living individuals

Refusals can only be authorised by the DPO and the requester should be informed of this decision in writing, within the statutory one calendar month.

#### **14. SAR Review**

The response to a SAR must contain information advising the requester of their right to a review of the decision or response received. This advice must include how they can request a review including the contact details of the supervisory authority.

The requester should be advised to make a request for review within 21 days of the date of final response from the Council. If a request for review is received after 21 days from the date of the Council's final response, the Council will treat the SAR as a new request. Only the DPO can authorise a SAR review. The one calendar month response period applies to SAR reviews.

#### **15. Freedom of Information Request (FOIR)**

Freedom of Information, established under the Freedom of Information Act (FOIA) 2000, allows any person or organisation, regardless of geographical location, to make a request to a public authority for recorded information held by the authority. It also places on public authorities the obligation to publish certain information.

FOI is subject to conditions and exemptions. All FOI requests must be in legible writing and have a return address.

The FOIA places the following responsibilities on SMBC:

- To entertain FOI requests
- To provide advice in writing to the requester whether the information requested is held or not
- To ask the requester for further information to enable the Council gain understanding of the requester's expectation.
- To inform the requester if the information is exempt from disclosure. This responsibility is dependent on the exemption.

#### **16. Registering a FOI Response Time and Format**



All FOIs must be made in writing to any officer of SMBC and the Council have 20 working days to respond. Where a requester is unable to make a request in writing, the Council should ensure that support is rendered in way of direction to another agency or person that may assist them. In some cases, the Council may offer to take a note of the request and confirm it with the requester. Once verified, by the requester, this would constitute a written request.

The officer receiving this request must immediately and, in all cases not later than one working day, pass on the details to the Governance team to be logged, clarified and allocated to the correct service area for processing. FOIs should not be processed without the knowledge of the DPO or the Governance team working on their behalf and responses must be made using a Governance approved FOI response format.

Sometimes it is necessary to seek clarification from the requester for what information is expected. This should be done at the earliest opportunity. When this happens, the requester should be given 14 days to re-submit their request.

Depending on the nature and scope of the FOI, it may be necessary to seek an extension from the requester. Request for clarification, extensions, exemptions or refusals can only be approved by the DPO and must be communicated in writing to the requester before the expiration of 20 working days from the date received.

## **17. Processing a FOI**

Responsibility for collating the information required for a FOI response, lies with the Directorates. However, the Governance team on behalf of the DPO, will provide the support required to enable Directorates understand what is required, determine whether the information is exempt, and draft an appropriate response.

All Directorates should designate a person or team as the focal point for receiving all FOIs allocated to the Directorate and sending out the response. If a FOI is wrongly allocated to a Directorate, the focal point must return the FOI to the Governance team no later than 2 working days following the wrong allocation.

## **18. Cost of Complying with FOIs**

Sandwell MBC pegs the cost threshold for responding to FOIR at 18 hours to locate, retrieve and extract the information requested. Each hour is charged at a rate of £25 per hour, per person, regardless of the officer status within the Council.

Concerns about cost threshold being exceeded must be communicated first to the Governance team. The decision to accept or reject cost threshold as a basis for the Council's response, lies solely with the Governance team, under the management of the DPO.

## **19. FOI Refusal**

A FOI request can be refused on grounds that the information requested is already publicly available, or intended for future publication, contains details of investigations and proceedings, is commercially sensitive, likely to impede or jeopardise law enforcement, contains health and safety implications, contains personal data or information given in confidence, contains information prohibited from disclosure and vexatious and/or repeated.

To determine whether to refuse on grounds of vexatious and/or repeated requests, The Council will consider the following:

- If the request is deemed excessive in nature
- Whether complying with the request would impose a significant burden on the Council
- If the request is expected to cause distress and harassment to Council employees or anyone working on behalf of the Council
- If the request is of a spurious nature and lacking merit
- Requests which include abusive or hostile language
- Requests made with increasing frequency
- History of the relationship between the requester and the Council
- Information already publicly available

Refusals must only be made upon approval by the DPO or any officer acting on their behalf.

## **20. FOI Review**

The response to a FOI request must contain information advising the requester of their right to a review of the decision or response received. This advice must include how they can request a review including the contact details of the supervisory authority.

The requester should be advised that a request for review must be made within the following 14 days. After the 14 day review request period lapses, the Council will treat such a request as a new request. Only the DPO can authorise a FOI review. The 20-working day response period applies to FOI reviews.

## **21. Environmental Information Regulations Request**

The Council recognises and complies with the requirements of the Environmental Information Regulations (EIR) 2004. EIR requests are similar to FOI requests, but of environmental information. Therefore, Sandwell MBC's policy for FOI requests should apply.

## **22. Publication Scheme**

Sandwell MBC maintain a publication scheme and update it regularly to maintain its relevance. The publication scheme contains documents, policies, plans and guidance used by the Council. It also specifies how this information will be made available to the public.

There are currently seven categories of information available.

These are:

- Who we are and what we do
- What we spend and what we spend it on
- Our priorities and current state of affairs
- The services we offer
- How we make decisions
- Policies and procedures
- Lists and registers

Members of the public are welcome to raise any issues in respect of the publication scheme to the Governance team.



