

FREEDOM OF INFORMATION ACT NEW MODEL PUBLICATION SCHEME

Further to NALC Legal Briefing L03-08.

As stated therein the proposal was that the new publication scheme was to be comprised of three elements. These are:

- **A publication scheme** – a commitment document, approved by the Information Commissioner and adopted by a public authority ;
- **A sector specific manual** (including the definition document) – containing definitions of information covered within the core classes of information in the scheme and including good practice guidance; and
- **A guide to proactively published information for the public** – a means by which the information made routinely available by an authority can be easily identified and accessed.

1. THE PUBLICATION SCHEME

In line with section 20 of the Freedom of Information Act 2000 the Information Commissioner has now developed and approved a new model publication scheme which can be adopted by parish and community councils as well as parish meetings. Adoption needs to take place by 31 December 2008 and the scheme will be operational from 1 January 2009. For the avoidance of doubt the new Model Scheme is generic in nature (i.e. it is for all public authorities irrespective of them being a local authority) and is not sector specific. The change of emphasis from detailed schemes to a very generic model is a deliberate move by the Information Commissioner's Office.

The model publication scheme may be adopted without modification and such adoption requires no further approval. In short parish/community councils and parish meetings can simply adopt the scheme (by way of formal resolution) without needing to submit anything to the Information Commissioner. This is a major change from the procedure required under the original scheme and is significantly more straight forward. Once adopted the scheme will be valid until further notice. Any modification which removes information from the model scheme will require the approval of the Information Commissioner.

A copy of the new model publication scheme (in both English and Welsh) is attached and can be disseminated to member councils and parish meetings accordingly. As will be seen the model scheme is not vastly different to the draft which was disseminated with NALC Legal Briefing L03-08. The model scheme is also available on the Information Commissioners website at www.ico.gov.uk - the easiest way of locating it is to click on Publication Schemes under the A-Z listing.

The scheme is in very basic terms evidence of a commitment/charter by parish/community councils and parish meetings to make information available to the public as part of its normal activities. It is however no longer the primary document that will be made available to members of the public – that will be the guide to proactively published information (see later) mentioned in the opening paragraph of this briefing.

The type of information covered in the scheme is included in the ‘classes of information’ set out below. Although a council or parish meeting will be adopting the model scheme in its entirety it will be committing to provide only the information which it actually holds. Therefore if for example the council or parish meeting does not hold a specific piece of information in one of the classes this does not mean it will be in breach of its obligations. If the council or parish meeting does not hold any information contained in a particular class it clearly cannot provide it. However there is no need to delete the class from the model scheme.

Additional assistance is provided as to the definition of the classes of information in the guide to proactively published information for the public. Two separate guides have been developed one for parish/community councils and one for parish meetings and both are attached.

The scheme commits a parish/community council or parish meeting:

- To proactively publish or otherwise make available as a matter of routine information, including environmental information, which is held by the council or parish meeting and falls within the classes set out below.
- To specify the information which is held by the council or parish meeting and falls within the classes below.
- To proactively publish or otherwise make available as a matter of routine information in line with the statements contained within the scheme.
- To produce and publish the methods by which the specific information is made routinely available so that it can be easily identified and accessed by members of the public.
- To review and update on a regular basis the information the council or parish meeting makes available under this scheme.
- To produce a schedule of any fees charged for access to information which is made proactively available.
- To make the publication scheme available to the public.

Classes of Information

The classes which are very broad in nature are set out below together with a brief summary of the kind of information the Information Commissioner anticipates is likely to fall within the scope of the class.

The classes are:-

1) Who we are and what we do.

Organisational information, locations and contacts, constitutional and legal governance.

2) What we spend and how we spend it.

Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.

3) What our priorities are and how we are doing.

Strategy and performance information, plans, assessments, inspections and reviews.

4) How we make decisions.

Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.

5) Our policies and procedures.

Current written protocols for delivering our functions and responsibilities.

6) Lists and Registers.

Information held in registers required by law and other lists and registers relating to the functions of the authority.

7) The Services we Offer.

Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act.
- Information in draft form.
- Information that is no longer readily available as it is contained in files which have been placed in archive storage, or is difficult to access for similar reasons.

The method by which information published under the scheme will be made available

The model scheme contains standard paragraphs setting out how the information can be accessed.

Parish/community councils and parish meetings will have the following obligations:-

- To ensure the public know what information is covered by the scheme and how it can be obtained.

- Where the council or parish meeting has a website to provide the information on that website.
- If the council or parish meeting does not have a website or it is impractical to provide it in that format or if the applicant does not wish to access the information via the website the council or parish meeting will indicate how information can be obtained by other means and provide it by those means.
- The council or parish meeting will provide details of the person to be contacted by those applicants who wish to view the information in person or to take account of the possibility that certain information only lends itself to be viewed in person. In such circumstances an appointment to view the information must also be arranged within a reasonable timescale.
- To provide information in the language in which it is held or in such other language that is legally required. To also translate any information where the council or parish meeting is legally required to do so. This may be something which could impact on community councils in accordance with the provisions of the Welsh Language Act.
- To adhere to requirements under disability and discrimination legislation and any other legislation to provide information in other forms and formats.

Charges which may be made for information published under the scheme

The model scheme also contains standard paragraphs stating whether any information contained within the classes is subject to a charge.

The scheme emphasises the following:-

- That any charges made by a council or parish meeting for routinely published material must be justified and transparent and kept to a minimum.
- Material which is published and accessed on a website will be provided free of charge.
- Charges may be made for actual disbursements incurred such as photocopying, postage and packing plus the cost directly incurred as a result of viewing information.
- Charges may also be made for information provided under the scheme where they are legally authorised, they are in all the circumstances, including the general principles of the right of access to information held by public authorities, justified and are in accordance with a published schedule or schedules of fees which is readily available to the public.
- Where a council or parish meeting is to make a charge the amount should be confirmed to an applicant in advance. The council or parish meeting may also request payment prior to providing the information if it so wishes.

Bespoke publication schemes

For completeness it is confirmed councils and parish meetings can still submit bespoke schemes if they prefer to. However the drive behind the revision is to encourage all public authorities to adopt the model publication scheme.

Information falling outside the scope of the publication scheme

This will continue to be dealt separately under the charging regime set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. A NALC Legal Briefing (L01-05) on those Regulations is available.

2. THE SECTOR SPECIFIC MANUAL (PREVIOUSLY REFERRED TO AS THE DEFINITION DOCUMENT)

For our sector it has been decided to combine both this element of the publication scheme and the guide to proactively published information into one single document.

In the circumstances there is no need for parish/community councils or parish meetings to concern themselves with a sector specific manual.

3. A GUIDE TO PROACTIVELY PUBLISHED INFORMATION FOR THE PUBLIC

This is the document which will actually be in the public domain and in essence will set out the practical effect of the scheme as well as acting as the sector specific manual. It will specify what information a council or parish meeting will routinely publish, what format/s that information will be available in and whether the council or parish meeting intends to charge for providing the same and if so the level of charge.

This is the document the public will be most interested in. It can take whichever format and style the council or parish meeting sees fit – it will not be necessary to refer to the ‘publication scheme’ or ‘classes’. In many cases, the public will access information without even realising that it is contained within a publication scheme class.

The guide which a council or parish meeting publishes does not need to be approved by the Information Commissioner. In addition the Information Commissioner has not been prescriptive about how the guide should be presented or promoted.

SUMMARY/ NEXT STEPS TO BE TAKEN BY PARISH/COMMUNITY COUNCILS AND PARISH MEETINGS

- i. Adopt the Model Publication Scheme by 31 December 2008 at the latest.*

As stated above this can be done simply by passing a resolution to that effect. There is no need to send any documentation to the Information Commissioner seeking approval.

- ii. In the alternative prepare and adopt a bespoke scheme which will need to be approved by the Information Commissioner.*

This is however not the recommended course of action.

iii. Complete 'The Guide to Proactively Published Information'

To do this each council will need to determine:

- what information it holds;
- what format/s it will provide it in;
- whether it is going to charge for provision of the information; for clarity charges can be made for disbursements e.g. photocopying, postage etc and officer time e.g. in retrieving the information etc. With regard to officer time however the expectation is that charging will be very much the exception rather than the norm as the information which is contained in the publication scheme ought to be routinely available and readily retrievable;
- the level of any charges (which must be stated on a schedule of charges and then inserted on the guide itself); and
- the name of the individual/s to whom requests for information should be directed (in particular the name of the person to whom requests to inspect in person should be directed)

Adoption of a new publication scheme and implementing the Guide is a good opportunity for councils to review the information they hold, organise their records and decide what information should routinely be made available to the public.

The Guide gives examples of the type of information that a council or parish meeting will be expected to publish. It does not give an exhaustive list and councils and parish meetings are encouraged to routinely provide as much information as possible under the seven classes of information. By way of example under Class 4 "How we make decisions" the Guide stipulates that as a minimum the current and previous years minutes of council meetings should be made available. However this would not prevent a council or parish meeting providing copies of minutes which relate to periods earlier than that provided of course that information is readily available and accessible.

Steps to be taken in completion of the Guide:-

- If a council or parish meeting does not hold the information listed in the Guide it can simply be deleted (by crossing it through) in its entirety.
- The second column requires each council or parish meeting to insert details of how (i.e. in what format) the information can be obtained. Some councils will have websites and will be obliged to indicate that the information can be downloaded from them. A council or parish meeting which does not have a website will need to indicate that the information will be supplied in hard copy. However it is also recognised that certain types of information only 'lends' itself to inspection in person and this can be indicated on the Guide.
- The third column relates to the cost of providing the information. If a council or parish meeting decides that it is going to raise a charge then it should insert the actual cost of providing the information here. The basis of this cost together with how it has been calculated should be made available by means of a separate schedule of charges (a draft schedule of charges is attached to the Guide). The guidance issued by the

Information Commissioner is that councils and parish meetings can recover the actual cost of any disbursements (e.g. photocopying and postage) which are incurred. However the recommendation is that with regard to photocopying and printing the charge should not exceed 10p per sheet. Thus in summary each council or parish meeting should i) decide whether it is going to charge for provision of the information, ii) complete the schedule of charges and then iii) insert the actual cost in the third column of the Guide.

- Each council or parish meeting must also specify the details of the person to be contacted by those applicants who wish to view the information in person or to take account of the possibility that certain information only lends itself to be viewed in person.

The Information Commissioner has produced guidance to completing the 'guide to information' for both councils and parish meetings. A copy of the same is attached with relevant pro-forma examples.

iv. Publish the Guide

This can be done by including the Guide on a website where appropriate. Alternatively the Guide can be displayed on a council's notice board or some other prominent place easily accessible to the public.

This briefing was issued by Ian Mark, Senior Legal Executive