

East Herts Council Report

Executive

Date of meeting: 6 July 2021

Report by: Tyron Suddes – Information Governance and Data Protection Manager

Report title: East Herts Council Access to Information Policy

Ward(s) affected: All

Summary – The report presents the newly drafted Access to Information Policy (Appendix A) which aims to underpin the council's guidance and procedures in the areas of access to information. In a report taken to Overview and Scrutiny Committee on 23 March 2021, the committee supported the proposal to recommend this draft policy to Executive for adoption. Executive is asked to consider the draft policy, propose any amendments and **adopt** the policy following any amendments.

RECOMMENDATIONS FOR Executive

- (a) That the draft Access to Information Policy be adopted following any amendments.**
- (b) That the Information Governance and Data Protection Manager be authorised to make any minor amendments that may be required, in consultation with the Head of Legal and Democratic Services.**

1.0 Proposal(s)

- 1.1. It is proposed that Executive considers the draft Access to Information policy and adopt it having first proposed any amendments it sees fit.

2.0 Background

- 2.1 Following an audit of the council's information management arrangements (Appendix B), it was identified that an Access to Information Policy would be required to further enhance the council's commitment to promoting and actively developing a culture of openness, transparency and accountability embodied in the relevant access to information legislation, including the UK GDPR, Data Protection Act, Freedom of Information Act, Environmental Information Regulations and the Re-use of Public Sector Information Regulations
- 2.2 The council has detailed guidance and procedures already in place to assist both staff and the public in the areas of access to information and it is the aim of this policy to underpin this guidance and act as an overarching governing document.
- 2.3 The draft policy went before Overview & Scrutiny Committee on 23 March 2021 and was recommended to Executive for adoption without any further amendments.

3.0 Reason(s)

- 3.1 Following an audit of the council's information management and data protection arrangements, a recommendation was made that a review of these arrangements would be carried out to ensure that all policies are updated and finalised. During this review, it was identified that the council has the relevant access to information guidance and procedures in place but that there is no overarching policy document to underpin these arrangements.

- 3.2 If adopted, the policy will act as an overarching document to ensure that the council conforms to the relevant procedures in access to information legislation and associated codes of practice. In particular, it aims to ensure compliance with the following key requirements:
 - 3.2.1 The lawful and correct treatment of personal information in terms of the UK GPDR and Data Protection Act 2018
 - 3.2.2 That information which is routinely published will be available in accordance with the council's publication scheme and the Local Government Transparency Code
 - 3.2.3 That information which is not readily available to the public can be made available on request, within the statutory time limit, unless a valid exemption applies
 - 3.2.4 Where an exemption is applied, that it is done consistently and appropriately, and in accordance with the relevant legislation

3.2.5 That a fair and efficient internal appeal system is administered

- 3.3 Under article 24(1) and the accountability principle of the UK GDPR, the council as a controller of data, must implement technical and organisational measures to ensure and demonstrate compliance with the UK GDPR.

While the UK GDPR does not specify an exhaustive list of things the council needs to do to be accountable, it does set out that putting in place relevant policies is a fundamental part of the approach to data protection compliance. The UK GDPR explicitly says that, where proportionate, implementing policies is one of the measures the council can take to ensure, and demonstrate compliance.

4.0 Options

- 4.1 Not to adopt this policy and maintain the existing access to information procedures and guidance without an overarching document. **NOT RECOMMENDED** as this would work against the council's aim to ensure sufficient compliance with the relevant access to information legislation
- 4.2 To consider and adopt this policy. **RECOMMENDED** as a means of ensuring that the council has an up-to-date overarching policy document in place to ensure that access to information best practice is adopted and applied.

5.0 Risks

- 5.1 It is possible that the risks of non-compliance with recommendations made in the audit report and with the relevant access to information legislation could occur if this policy is not adopted
- 5.2 The impact of these risks would be moderate in that the council may face a fine if it is found to be insufficiently compliant with article 24(1) of the UK GDPR. Although the council does currently comply with article 24(1), this policy will further enhance compliance.
- 5.3 There may be additional reputational implications if the Information Commissioner's Office were to investigate the council in order to determine level of compliance regardless of the final decision.

6.0 Implications/Consultations

Community Safety

No

Data Protection

Yes – The adoption of this policy would further enhance the council's data protection and related access to information procedures and guidance.

Equalities

Yes – The policy aims to ensure that equality best practice is applied to the council's access to information procedures and guidance.

Environmental Sustainability

No

Financial

Yes – The policy, at 5.4 and 5.8.2 notes the statutory limit it may charge requestors for access to information under specific conditions. These charges are available through the council's access to information procedures and fee structure.

Health and Safety

No

Human Resources

No

Human Rights

No – although not specifically human rights, this policy does ensure that relevant access to information and data protection rights are upheld, particularly those relating to the right to privacy.

Legal

Yes – The Council is under an obligation to ensure it complies with UK data protection law, and the adoption of this policy strengthens the council's compliance with the relevant access to information legislation.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 Appendix A – DRAFT – East Herts Council – Access to Information Policy

7.2 Appendix B – EHC 1920 – Information Management – Final Report

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