

Derby City Council – Response
ID Reference FOI618675745
Date 21/03/2025

Information Requested	Response
<p>Could you please supply the following information relating to Derby City Council policies. The enquiry broadly relates to the inclusion of personal data in email communications between Derby City Council officers, officers from other agencies, and the public, with particular reference to any recent (last 3 years) changes to such policies.</p>	
<p>1. Details of policies governing what personal information can be included in email communications from Derby City Council officers. This would include any policies by Derby City Council that might prohibit discussion of personal information by email.</p> <p><i>For example, if a social care officer wished to discuss a referral to children's social care with a parent / carer and the topic to be discussed necessitated discussion of personal details of the family or any other third parties, are there any policies which would specifically prohibit discussing this by email, as opposed to other communication methods.</i></p>	<p>The Council has policies in place to ensure that colleagues act in compliance with data protection legislation when processing personal data by way of email communications. Those are listed below:</p> <ul style="list-style-type: none"> - Data Protection Policy Information Security - Information Security & IT Acceptable Use Policy - Records Management Policy - Information Governance Framework - Data Protection Appropriate Policy Assurance Document - Freedom of Information and Environmental Information Policy - Access Controls Policy - Surveillance Policy <p>Such policies detail classification procedures in place to ensure appropriate security measures are followed when sending sensitive information by email. Those include the use of encryption services.</p> <p>Email is a method processing data so the majority of the Council's Information Governance Policies will apply in a general sense.</p>



<p>2. Do any restrictions that exist apply to all email communications, or only to certain recipients?</p> <p><i>For example, in the example given above, would any restrictions on discussing personal data apply only to emails between Derby City Council officers and the family, or would they also apply to emails between Derby City Council officers and other external agencies such as health, police, and other local councils.</i></p> <p>If there are differentiating policies relating to this, can the differences be clearly detailed with reference to policies / minutes of meetings at which they were applied.</p>	<p>All sharing must be in compliance with UK data protection legislation, the policies (referenced in answer 1) seek to promote such compliance. Sharing personal data by email must be undertaken in compliance with the Council's data protection obligations as well as the IS&IT Acceptable Use Policy.</p>
<p>3. Have any changes been made to policies on the above topics, or any new restrictions imposed upon discussing personal information by email in the past three years?</p> <p>If so, can the dates of these changes be listed, and references to the amendments / minutes provided.</p> <p>If it is the case that there are policies prohibiting officers from discussing personal matters in emails, what alternative communication methods are considered acceptable, and are there methods of electronic communication available to officers which are considered by Derby City Council to be secure enough to discuss such information (for example, secure or encrypted email services)</p>	<p>Copies of Policies:</p> <p>Section 31– Law Enforcement</p> <p>Section 31(3) Law Enforcement Exemption</p> <p>We neither confirm nor deny we hold this information - please see the IT security/cyber security guidance published on our website at https://derby.gov.uk/cyber-foi/ for more information about non-disclosure reasons.</p> <p>Section 43(2): Commercial interests</p> <p>Section 43 (2) states:</p> <p>(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).</p> <p>The exemption under Section 43 (2) is both qualified and prejudiced based. I am therefore required to establish any harm or prejudice that may be caused by disclosing the requested information. I am also required to conduct a public interest balance test and</p>



make a decision as to whether the public interest favours releasing the requested information or withholding it.

Applicable interest within the exemption¹

The information is commercial in nature as it relates to the policies, procedures or guidance which the Council provides to third party organisations as part of a sold service.

The nature of the prejudice

It must be shown; that the prejudice that may result is “real, actual or of substance” and that there is a causal link between the disclosure and the potential prejudice.

Should this specific information be released it would significantly affect the commercial interests of Derby City Council as it would allow anyone wishing to obtain the policies, procedures or guidance free of charge which would likely stop current/future customers from purchasing them through the sold service.

This would significantly impact on the Council’s ability to fund this service as third-party organisations could retrieve the information from the FOI disclosure log where all responses are published. The income generated also contributes to staffing costs in the Information Governance Team and the loss of income would/would likely result in an employee losing their job.

The policies, procedures or guidance form a part of the service offered along with support and advice from an appointed member of staff.



In addition, there is an element of a breach of trust that means the Council's commercial interests could also be affected. Should the Council be seen to be openly releasing the information into the public domain after having charged organisations including schools for this privileged data it would negatively affect the Council's future relationships with these customers and others. These organisations may lose trust in the Council, meaning they may no longer purchase services from us and our negotiating position with them would be weakened as the Council would be seen as charging for services we then release for free soon after.

The likelihood of prejudice

In order for the commercial interests exemption to be engaged the parties need to identify the prejudice which would be likely to result from the disclosure. This must be more than a 'hypothetical possibility; there must have been a real and significant risk.'

There is a real and significant risk that the prejudice stated above in relation to the Council would result in a decreased income due to customers not being required to purchase the sold service in order to obtain the data. This would have a detrimental effect on the Council and would directly affect our ability to hire a sold service employee who provides a support function and advisory role to customers who have purchased our services. In addition to this detrimental effect the release of policies, procedures or guidance would also damage relationships with schools/organisations who have already purchased the product further hindering our ability to fund the service, it is also very likely that some of the customers would request a full or partial refund as the value of the sold service has lessened; this



would cause further harm to the Council both financially and in terms of reputation.

The commercial interests are very likely to be adversely affected if this information was to be released for the reasons provided above, this is clearly shown above

Public Interest test

Public interest considerations favouring disclosure

There is a public interest in the public being fully informed about how the Council operates, this is particularly the case for Council who are funded by public money. Also the release of the information would lead to a better informed public and promote a culture of openness and transparency within the Council in particular. However this has to be balanced with the harm that could be caused to the parties' commercial interests.

Public interest considerations favouring non- disclosure

There is a public interest that we are transparent about how the Council operates however this must be balanced against the negative consequences of releasing this both on our customers and the Council. In this instance it would negatively affect the commercial interests of the Council for the reasons provided above and the disclosure would prevent us from funding these services as the incentive for the policies, procedures or guidance documents would be removed.

In addition there is an element of a breach of trust that means the Council's commercial interests could also be affected. Should the Council be seen to be openly releasing the information into the public domain after



having charged organisations including schools for this privileged data it would negatively affect the Council's future relationships with these customers and others. These organisations may lose trust in the Council, meaning they may no longer purchase services from us and our negotiating position with them would be weakened as the Council would be seen as charging for services we then release for free soon after.

Evaluation

On balance our view is that whilst there is a public interest in this information being released there is a stronger public interest in this information being withheld. As such we are unable to provide policies, procedures or guidance information requested by virtue of Section 43(2) FOIA 2000.

Copies of minutes:

Section 31– Law Enforcement

Section 31(3) Law Enforcement Exemption

We neither confirm nor deny we hold this information - please see the IT security/cyber security guidance published on our website at <https://derby.gov.uk/cyber-foi/> for more information about non-disclosure reasons.

Copies of all changes:

Section 12 Cost of Compliance

Section 12 of the Act makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit which is set at £450 for local authorities. This represents the estimated cost of one person spending 2½ working days (£25 a hour) in determining whether the Council holds the



	<p>information, and locating, retrieving and extracting the information.</p> <p>Considerations</p> <p>The Council are applying Section 12 – exceeds appropriate limit to this part of the request as the Council has several policies relating to Information Governance.</p> <p>These policies are held on our intranet and are updated regularly to ensure they are accurate and in line with any changes within the law.</p> <p>Any updates that made to the policies are done collaboratively. This would include meetings minutes and emails with comments and suggestions for adjustments.</p> <p>To be able to gather all information over a 3-year period for all policies and the accompanying documentation will require a manual search for each policy and accompanying documentation each time they may have been changed within that time period.</p> <p>Assuming that each search would take approximately 15 minutes to search and extract each file across multiple systems including files that have been archived relating to a change in a policy – and it is certain that some searches would take much longer than that – this would be well in excess of the 18 hours which would accrue a charge of £450, triggering the provisions of section 12 of the FOIA.</p>
<p>It is of particular importance that the relevant dates that any policies, or amendments to policies relating to. the above matter are detailed, along with references to where the policies / amendment to policies can be viewed.</p>	

Please note, the following applies, if the response includes council officers (or other officers) names.

If you are a company that intends to use the names and contact details of council officers (or other officers) provided for direct marketing, you need to be registered with the Information Commissioner to process personal data for this purpose. You

must also check that the individual (whom you wish to contact for direct marketing purposes) is not registered with one of the Preference Services to prevent Direct Marketing. If they are you must adhere to this preference. You must also ensure you comply with the Privacy Electronic and Communications Regulations (PECR). For more information follow this Link www.ico.org.uk

For the avoidance of doubt the provision of council (and other) officer names and contact details under FOI does not give consent to receive direct marketing via any media and expressly does not constitute a 'soft opt-in' under PECR.

