

# Freedom of Information Policy



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# Document Control

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## Consultation History

<b>Position</b>	<b>Organisation</b>
Chief Legal Officer	Birmingham Organising Committee for the 2022 Commonwealth Games Limited
Chief Marketing and Communications Officer	Birmingham Organising Committee for the 2022 Commonwealth Games Limited

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## **1. Introduction**

- 1.1 The Birmingham Organising Committee for the 2022 Commonwealth Games Limited (Birmingham 2022) is a non-departmental public body and as such is subject to the Freedom of Information Act 2000 (FOIA). This legislation provides for a general right of access to all types of "recorded" information held by Birmingham 2022, subject to a number of exemptions that are specified in the Act.
- 1.2 Any person has the right to make a request for information under the Act regardless of who they are or where they live.
- 1.3 FOIA sets out the way requests should be handled, outlines the circumstances under which information is exempt from disclosure and highlights the statutory obligations of Birmingham 2022.

## **2. Scope**

- 2.1 This policy applies to all persons working for Birmingham 2022 or on its behalf in any capacity, wherever located. It includes those who work at home or have remote or flexible patterns of working.
- 2.2 This policy covers all recorded information held and processed by or on behalf of Birmingham 2022, regardless of the format in which it is held. Such formats may include information held manually or on paper, information held electronically, including via email, information held in a visual or audio format. This policy also applies to all information systems managed by or used by Birmingham 2022.
- 2.3 This policy is currently available on SharePoint and will eventually be made available via the employee Intranet.

## **3. Principles**

- 3.1 Birmingham 2022's Board supports the principle that as a non-departmental public body in receipt of public funds, Birmingham 2022 should operate in a manner that is both open and transparent.
- 3.2 The over-riding principle that underpins this policy is that information that is held by Birmingham 2022 will be made publicly available where it is appropriate to do so, and in accordance with the provisions of FOIA.
- 3.3 Birmingham 2022 must be allowed to operate effectively, and therefore reserves the right to make appropriate use of the exemptions outlined in FOIA.
- 3.4 Birmingham 2022 supports the right of an individual to privacy and confidentiality. Consequently, any release of information that takes place under FOIA will not contravene these rights and will be compatible with the provisions of Data Protection Legislation.

## **4. Responsibilities**

- 4.1 The Chief Executive Officer is responsible for ensuring compliance with FOIA and for ensuring that a Freedom of Information Publication Scheme is published and maintained. The Chief Executive Officer is also the qualified person for the purpose of section 36 of FOIA.
- 4.2 The Chief Legal Officer is responsible for the provision of advice as to what does or does not constitute a request under the Act when this is not clearly stated.
- 4.3 The Data Protection Officer is responsible for developing and maintaining this policy and procedure and for processing all requests for information made pursuant to FOIA.
- 4.4 In order to ensure that the statutory time limit for responding is met, all staff are responsible for ensuring that responses to FOIA requests are promptly forwarded to the Data Protection Officer for processing within the required timescale (see section 6.2 below).
- 4.5 The relevant manager(s) in each functional area is responsible for collating the information needed to respond to a FOIA request and for forwarding this to the Data Protection Officer within the required timescale.

## **5. Rights of applicants**

- 5.1 FOIA gives applicants two related rights when requesting information:
  - the right to be told whether the requested information exists (unless confirming its existence would in itself defeat the purpose of any applicable exemption); and
  - the right to receive the information, subject to any applicable exemption.
- 5.2 Anyone is entitled to make a freedom of information request, including members of the public or organisations such as a newspaper or company. To be valid under FOIA, the request must:
  - be in writing, such as a letter, fax or email. Requests can also be made via the internet or social networking sites such as Birmingham 2022's Twitter, Facebook or Instagram account;
  - include a description of the information requested;
  - include the applicant's real name. In accordance with guidance from the Information Commissioner's Office ("ICO"), Birmingham 2022 does not need to verify the identity of each applicant, however, where it is clear they are using a pseudonym or fictitious name, the request will be treated as invalid and information will not be provided unless Birmingham 2022 receives confirmation of the applicant's or organisation's realname;
  - an address for correspondence. This can include a postal or email address.
- 5.3 There is no requirement under FOIA for the applicant to state why they are requesting the information or to demonstrate why they are entitled to it.

## **6. Responsibilities of Birmingham 2022**

Birmingham 2022 will provide information in accordance with FOIA as follows:

### **Publication Scheme**

- 6.1 Birmingham 2022 will maintain a publication scheme, based on the Information Commissioner's 'Definition document for Non-Departmental Public Bodies and Public Authorities.' The publication scheme will set out the different classes of information that Birmingham 2022 holds, a guide to information (specifying what information is published and how it is available) and whether there will be a charge for providing the information.
- 6.2 The publication scheme will be published on Birmingham 2022's website and will be reviewed annually.
- 6.3 Birmingham 2022 should proactively publish information and replace or update information that has been superseded.

### **Requests for information**

- 6.4 Requests for information will be managed in accordance with the requirements of FOIA, using the principles set out below.

### **Timescales**

- 6.5 Requests for information that are made pursuant to FOIA will be acknowledged by email (or letter where email is not available) to the recipient within 5 working days of receipt.
- 6.6 The Data Protection Officer will provide the request (in anonymised form) to the relevant manager within each functional area within 2 working days of receipt. The request will be sent out from [FOI@Birmingham2022.com](mailto:FOI@Birmingham2022.com) and any response should be provided to that address.
- 6.7 It is expected that the relevant manager(s) will be able to provide a response to the Data Protection Officer within 15 working days from the date the original request is received unless there are exceptional circumstances as to why the information cannot be provided within this timescale.
- 6.8 Birmingham 2022 will endeavour to respond to all requests promptly and within 20 working days in accordance with the time limit for compliance under FOIA. In the event that the statutory timescale cannot be met, Birmingham 2022 will notify the applicant and provide an estimate of the date on which a response will be provided.
- 6.9 Where required, Birmingham 2022 may claim a reasonable extension of time to consider the public interest test under a qualified exemption. However, the period for any such consideration must not extend beyond an additional 20 working days.
- 6.10 Where additional information or clarification is required from the applicant to enable the request to be processed, this should be requested as soon as possible after the request

is received. The 20 working days will commence the day after the additional information or clarification has been received by Birmingham 2022.

### **Format of information**

- 6.11 Birmingham 2022 will provide the information it holds in the manner requested by the applicant, unless an exemption applies. This may be in electronic or written form. In the event that the information cannot be provided in the format requested and where an exemption does not apply, Birmingham 2022 will offer inspection facilities through the Chief Legal Officer.
- 6.12 If the information being made available is a dataset and the applicant has requested a preference for an electronic copy, then so far as is reasonably practicable, the dataset must be provided in a re-usable form.
- 6.13 In accordance with guidance published by the ICO, Birmingham 2022 will provide reasonable advice and assistance to applicants in identifying the information that they require when this is not clear from the request received. This includes re-directing the request if the information is held by another body.

### **Duty to confirm or deny**

- 6.14 Birmingham 2022 has a duty under FOIA to inform the applicant whether it holds the information specified in the request and whether this is in whole or in part.
- 6.15 Birmingham 2022 will not have to comply with this duty where the confirmation or denial would, in itself, disclose information that falls under an exemption or which would contravene Data Protection legislation. In these circumstances, Birmingham 2022 can respond by refusing to confirm or deny whether it holds the requested information. The exception to this is where the information is exempt because it is accessible by other means under section 21 of FOIA. When applying this exemption, Birmingham 2022 has a duty to inform the applicant where the requested information can be located, if this is known.

### **Log of requests**

- 6.16 The Data Protection Officer will keep a record of all requests for information, and the outcome of those requests.

### **Fees**

- 6.17 Birmingham 2022 will not charge for the provision of any information where:
- the costs liable to be incurred in complying with the request do not exceed the current statutory limit (currently £450 or 18 hours' worth of time incurred in providing the information at £25/hour)<sup>1</sup>; or
  - that information is published on its website and is downloadable.

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<sup>1</sup>Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

- 6.18 In the event of a request for a hard copy of any information that is electronic and freely available, Birmingham 2022 may charge for the cost of photocopying, printing and postage or any scanning costs that may be incurred.
- 6.19 In the event that requested information is not available via the website, Birmingham 2022 will estimate the cost of complying with the request in line with the applicable regulations.
- 6.20 Where the estimated cost of compliance with the request exceeds £450, Birmingham 2022 will not be obliged to respond to the request and will inform the applicant by means of a refusal notice.
- 6.21 Birmingham 2022 should, where reasonable, provide advice and assistance to help the applicant to refine the request so that it can be dealt with under the appropriate limit.
- 6.22 When estimating the cost of compliance with a request, Birmingham 2022 can only take into account the costs it reasonably expects to incur in determining whether the information is held, any actual costs associated with locating and retrieving the information and/or extracting it from a document that contains it. Birmingham 2022 cannot include the staff time taken, or likely to be taken, in considering whether any exemptions apply or in removing any exempt information in order to leave the information that is to be disclosed (often referred to as 'redaction') in the costs estimate.
- 6.23 The staff time that is incurred in the above activities will be charged at a rate that is approved by the Information Commissioner and may change from time to time<sup>2</sup>.
- 6.24 If the information being made available is a dataset and the applicant has requested a preference for an electronic copy, then so far as is reasonably practicable, the dataset must be provided in a re-usable form<sup>3</sup>. The information will remain the copyright of Birmingham 2022.

## **7. Terms and conditions of re-use**

- 7.1 Under the re-use of Public Sector Information Regulations<sup>4</sup>, an applicant may use information disclosed by Birmingham 2022 for a purpose other than that for which the information was originally produced by Birmingham 2022.
- 7.2 Information supplied under FOIA and / or the Environmental Information Regulations 2004 is subject to Birmingham 2022's copyright unless otherwise indicated. It may be reproduced free of charge in any format or medium (unless expressly indicated to the contrary) provided:
- It is reproduced accurately and not used in a misleading manner;
  - The source is identified, and Birmingham 2022's copyright is acknowledged; and
  - It is not used for the principal purpose of advertising or promoting a particular brand, product or service.

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<sup>2</sup> Currently £25 per hour

<sup>3</sup> Secretary of State's Code of Conduct (Datasets) Issued under Section 45 of the Freedom of Information Act 2000 – Published July 2013

<sup>4</sup> Reuse of Public Sector Information Regulations 2015

- 7.3 This permission does not extend to any material which is the copyright of third parties. Authorisation must be obtained from the copyright holders in order to reproduce such material.

## **8. Exemptions**

- 8.1 In accordance with the spirit of FOIA and in the interests of transparency, there will be a presumption in favour of the disclosure of information; and all information that is requested will be provided to the applicant upon the payment of any applicable fees, unless all or part of the information falls under one or more of the exemptions set out within FOIA.

### **Absolute exemptions**

- 8.2 FOIA provides for a number of absolute exemptions; in the event that all or part of the information that is being sought falls within one of the absolute exemptions, then Birmingham 2022 does not need to confirm or deny its existence (with the exception of section 21 of FOIA) or disclose the information. An example of an absolute exemption would be section 41 of FOIA, which concerns information provided in confidence. This absolute exemption applies if the information was provided by someone else and if disclosure of that information would result in a breach of confidence that would be actionable.
- 8.3 If Birmingham 2022 is relying on an absolute exemption, the applicant will be informed of this in a written refusal notice within the standard time for compliance. The refusal notice should specify which exemption Birmingham 2022 is relying upon and why.

### **Qualified exemptions**

- 8.4 FOIA provides for a number of qualified exemptions; in the event that all or part of the information that is being sought falls into one of the qualified exemptions, then the public interest test will be applied when considering whether the information should be disclosed. One such example is Section 22 of FOIA, which provides a qualified exemption for information intended for future publication.
- 8.5 If it is determined that withholding the information outweighs the public interest in disclosing it, then Birmingham 2022 will not disclose the information and the applicant will be informed of this in a written refusal notice within the standard time for compliance.

## **9. The public interest test**

- 9.1 Birmingham 2022 will only withhold information under a qualified exemption if the public interest in maintaining the exemption outweighs the public interest in disclosure.
- 9.2 The public interest test is not defined within FOIA and for the purposes of this policy, it will be treated as something which serves the interests of the public and not something that is merely of interest to them. Guidance published by the ICO advises that the public

interest here means the public good, not what is of interest to the public or the private interests of the applicant.

- 9.3 In the event that information is withheld from the applicant on the basis of the public interest test, Birmingham 2022 will provide the applicant with a written refusal notice setting out why it has reached the conclusion that the public interest in maintaining the exemption outweighs the public interest in disclosure.

## **10. Vexatious or repeated requests**

- 10.1 Birmingham 2022 is committed to complying with FOIA and the provision of information, however it is recognised that from time to time FOIA may be used in a vexatious way through repeated requests or in an otherwise inappropriate manner. Section 14 of FOIA permits Birmingham 2022 to refuse to comply with repeated or vexatious requests for information and Birmingham 2022 reserves the right to rely on the relevant provisions and act in accordance with guidance from the Information Commissioner's Office.

### **Repeated requests**

- 10.2 In order to balance the right of the individual to request information and the right of Birmingham 2022 to carry out its duties effectively, in the event that Birmingham 2022 has previously complied with a request for information, it is not obliged to comply with a subsequent identical or substantially similar request from the same person, unless a reasonable amount of time has elapsed between those requests. Birmingham 2022 will consider each case on its own merits and act in accordance with guidance from the Information Commissioner's Office.
- 10.3 Whether a reasonable interval has elapsed will be largely dependent upon the likelihood of any of the information caught within the scope of the request differing or having changed from that previously provided.
- 10.4 Birmingham 2022 must issue a refusal notice unless it has already served the applicant with a notice in response to a previous request for the same information and it would be unreasonable to issue another one.

### **Vexatious requests**

- 10.5 In determining whether a request is vexatious, Birmingham 2022 must consider the nature of the request itself, and not the nature of the applicant who submitted it. Vexatious requests will include requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress and may display the following indicators:
- abusive or aggressive language (is potentially threatening or discriminatory);
  - mandate a wholly unreasonable burden on the part of the organisation to comply with the request;
  - contains accusatory and potentially libellous material;
  - the request is futile (i.e. has been already comprehensively determined by some other public body);
  - the request is frivolous (i.e. lacks any serious purpose).

- 10.6 Birmingham 2022 will determine whether a request is vexatious based on its own assessment of all the relevant circumstances in each case and will act in accordance with guidance from the Information Commissioner's Office.
- 10.7 Birmingham 2022 must issue a refusal notice within 20 working days unless it has already given the applicant a refusal notice for a previous vexatious request and it would be unreasonable to issue another one. The notice should inform the requestor that the request has been refused under Section 14(1) and advise them of their right to appeal to the ICO. It is good practice to record the reason for the decision in the notice and Birmingham 2022 will record the reasons for refusing any request as vexatious in the freedom of information record of requests.
- 10.8 Birmingham 2022 will also use this record to help identify those that may be making requests in a vexatious or repeated manner and reserves the right to refuse the applicant's request.

## **11. Complaints**

- 11.1 Birmingham 2022 operates a complaints procedure that will give the applicant the right to an internal review of the administration or outcome of any valid FOIA request within two calendar months of the date of the response.
- 11.2 The internal review must be conducted by a person who was not party to the original decision on whether to release information and will ordinarily be undertaken by the Chief Executive Officer within 20 working days.
- 11.3 Where the CEO has been closely involved in the original request, any review will be conducted by the Chairman of Birmingham 2022.
- 11.4 If following the review, the applicant remains dissatisfied, then they have the right to lodge a complaint with the Information Commissioner.
- 11.5 The Data Protection Officer will keep a record of the outcome of all complaints, reviews and outcomes.

## **12. Monitoring**

- 12.1 The Data Protection Officer will monitor the implementation of this policy and any subsequent revisions, this will include:
- Monitoring complaints made by individuals via the FOI internal review process with a view to making any necessary amendments to the content of this policy;
  - Monitoring Birmingham 2022's compliance with relevant Freedom of Information legislation.

## 13. Review

13.1 This policy will be subject to review biannually after its date of approval. Earlier review may be required if any of the following occur:

- The adoption of the policy highlights any errors or omissions in its content;
- Following monitoring of complaints made by individuals via the internal review process, amendments are required to the content of the policy;
- Where relevant changes in legislation or national guidance impact upon the content of this policy.

## 14. References

- The Guide to Freedom of Information, ICO, August 2017
- Freedom of Information Act 2000: <http://www.legislation.gov.uk/ukpga/2000/36/contents>
- Freedom of Information and Data Protection Act (Appropriate Limit and Fees) Regulations 2004: <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>
- Reuse of Public Sector Information Regulations 2015: <http://www.legislation.gov.uk/uksi/2005/1515/made>