

COMMITTEE:	Cabinet
MEETING DATE:	11 November 2025
BY:	Depute Chief Executive Resources and Economy
REPORT TITLE:	Access to Information Policy
REPORT STATUS:	Public

1 PURPOSE OF REPORT

- 1.1 To request approval of the new Access to Information Policy for corporate adoption, including a new approach to charging for environmental information requests under the Environmental Information (Scotland) Regulations 2004 ('the EIRs').

2 RECOMMENDATIONS

- 2.1 Members are recommended to approve the new Policy for adoption.

3 BACKGROUND

- 3.1 The Environmental Information (Scotland) Regulations 2004 ('the EIRs') provide a general right of access to environmental information held by public authorities. As is the case for Freedom of Information legislation, the EIRs are regulated by the Scottish Information Commissioner ('the SIC').
- 3.2 In November 2024, East Lothian Council ('the Council') received a Decision Notice from the SIC in relation to an appeal of the Council's response to a request for environmental information. The SIC found that the Council's existing Schedule of Fees and associated Policy on charging under the EIRs were not compliant with legislation. In particular, he found the Council's 'blanket approach' to charging to be incompatible with the spirit of the legislation.

- 3.3 The SIC noted the terms of Regulation 8(8) of the EIRs, which states that a Scottish public authority must publish a schedule and information on the circumstances in which a fee may be charged, waived or required to be paid in advance in relation to requests for environmental information. The SIC noted that, while he considers the Council to be compliant with the first part of this requirement, it is not with the second. He further noted that 'In the Commissioner's view, the requirement to detail these circumstances carries with it the expectation that fees will not be charged invariably, they will be waived on occasion, and they will not always require to be paid in advance.'
- 3.4 The SIC accordingly asked the Council to review its approach to charging to produce environmental information, along with all relevant material published or provided to applicants. In July 2025, the SIC also published revised guidance on the application of charges in relation to environmental information requests. The revised guidance clarifies:
- Any costs charged must not be such that requesters are dissuaded from seeking to obtain environmental information or that the right to access is restricted (it should be possible to identify – and address - any deterrent impact from regular scrutiny of case handling statistics).
 - It is not unreasonable to have a policy on charging (generally, it will be helpful to do so), but a policy providing or allowing for the indiscriminate application of charges is unlikely to be reasonable...the Commissioner's view is that charging should be resorted to in limited circumstances only and not routinely.
 - Public authorities should be able to demonstrate to the Commissioner that, in setting charges, they have undertaken a proper study of all of the relevant factors which should be taken into account; that they have given those factors proper consideration and that they have not taken into account any other, irrelevant factors.
 - the cases in which advance payment is required should be limited...A blanket approach to advance fees is likely to fall foul of the Directive. Equally, the inclusion of the other matters specified in regulation 8(8) (the circumstances in which a fee may be charged or waived) suggests that a blanket approach to either is not what the EIRs have in mind.
- 3.5 The new Access to Information Policy has been drafted with regard for this guidance. Pending approval of the new Policy, the Council has elected to suspend all charging in relation to EIRs since 01 January 2025. Approval of this new Policy will allow modified charging to resume in line with current guidance.
- 3.6 In addition to changing the Council's approach to charging, the new policy covers all aspects of providing access to Council-controlled information. In particular, the new policy adds provisions regarding:

- the circumstances where requests may be classed as malicious or vexatious;
- commitment to proactive publication via the Council's Publication Scheme;
- third-party requests for personal data.

4 POLICY IMPLICATIONS

Training and awareness

- 4.1 The shift from a policy that charges by default to a policy that sets out a framework whereby charges may be applied gives greater discretion to Services on when and where to charge. Accordingly, there will be a need for increased training and engagement to ensure that all relevant staff have a good understanding of the factors that need to be taken into account.
- 4.2 Additions to the Policy include a more explicit focus than previous policies on the circumstances when the Council can decline to respond to a request. Training should therefore empower staff to be confident in knowing when they can decline to respond to requests that place an unreasonable burden on the Council.

Business Impact

- 4.3 EIR request statistics since fees were waived on 01 January 2025 indicate a significant increase in the number of requests progressing through the full request process. The Service areas most commonly affected have been:
 - Roads
 - Property Maintenance
 - Planning
 - EHTS
 - SACPM
 - Insurance (not chargeable)

It is likely therefore that trends under the new Policy will continue with increased impact on Services charged with responding to EIRs.

Proactive Publication

- 4.4 Acknowledging the resource impact, the new Policy presents an opportunity to shift the Council's approach to its Publication Scheme, which is currently under-utilised. Proactive publication will allow the Council to redirect requesters earlier in the request process, as we are able to apply a straightforward exemption to published information, and

it will enhance the Council's compliance with other information legislation (such as the Re-Use of Public Sector Information Regulations) and Open Data initiatives, in addition to strengthening the Council's relationship with the public through increased transparency.

Records Management

- 4.5 A key measure to enhance compliance and reduce the impact on staff time will be a focus on improving records management, which current rests at low maturity throughout the organisation. While some requests received by the Council will be clearly excessive, significant improvements to the structure and quality of Council records are also needed to reduce staff time and costs overall.

5 RESOURCE AND OTHER IMPLICATIONS

- 5.1 Finance: the increase in EIR requests progressing through the full response procedure will have an impact on costs to the Council, primarily in terms of staff time. Prior to implementation of the new Policy, the costs of processing reviews and appeals were significantly greater than the income received via fees, resulting in a net cost to the Council. Due to the in-built time for submitting requests for internal review (40 days from the date of the Council's response) or appeals to the SIC (6 months from the date of the Council's review response), we are unlikely to be able to quantify the impact of the new Policy on requests for internal review/appeals until at least the second quarter of the next financial year.
- 5.2 Human Resources: there will be an impact on staff time in the Customer Feedback team as well as Services charged with responding to requests for environmental information. Request statistics indicate an increase of c.63% in EIR requests requiring a full response when compared with a similar period in the previous year.
- 5.3 Other (e.g. Legal/IT): there will be a positive impact on legal compliance as the Council aligns more closely with statutory guidance.
- 5.4 Risk: there will be reduction in risk of non-compliance with legislation and associated reputational damage.

6 INTEGRATED IMPACT ASSESSMENT

- 6.1 ***Select the statement that is appropriate to your report by placing an 'X' in the relevant box.***

An Integrated Impact Assessment screening process has been undertaken, and the subject of this report does not affect the wellbeing of the community or have a significant impact on: equality and human rights; tackling socio-economic disadvantages and poverty; climate change, the

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environment and sustainability; the Council's role as a corporate parent; or the storage/collection of personal data.

or

The subject of this report has been through the Integrated Impact Assessment process and impacts have been identified as follows:

X

Subject	Impacts identified (Yes, No or N/A)
Equality and human rights	Yes
Socio-economic disadvantage/poverty	Yes
Climate change, the environment and sustainability	No
Corporate parenting and care-experienced young people	No
Storage/collection of personal data	No
Other	No

The changes will have a positive impact on transparency and public access to information, particularly for individuals with lower incomes.

The Integrated Impact Assessment relating to this report has been published and can be accessed via the Council's website:

https://www.eastlothian.gov.uk/info/210602/equality_and_diversity/12014/integrated_impact_assessments

7 APPENDICES

7.1 Access to Information Policy v2.0

8 BACKGROUND PAPERS

8.1 [Decision 257-2024](#) – Scottish Information Commissioner

9 AUTHOR AND APPROVAL DETAILS

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Approval Date	28 October 2025



**Access to Information Policy
2025-2028**

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Document Control

Version	Date	Description	Reviewed by
1.0	September 2012	ELC Freedom of Information and Environmental Information Regulation Policy created	Not recorded
1.1	June 2013	Information Charging Policy created to supplement FOI & EIR Policy	Not recorded
1.2	2015	Information Charging Policy reviewed	RG
1.3	May 2017	FOI & EIR Policy reviewed – post titles, team names amended	SDN
1.4	May 2017	Information Charging Policy reviewed	SDN
2.0	August 2025	FOI & EIR Policy and Information Charging Policy reviewed and amalgamated to form Access to Information Policy	Zarya Rathé

1. Introduction

Under information legislation in Scotland, individuals have the right to ask East Lothian Council ('the Council') for access to the recorded information it holds. This legislation is key to protecting individual rights, promoting government accountability and fostering good relationships between public authorities and individuals, founded on transparency and openness.

This document sets out the Council's Policy for providing access to its recorded information in line with the following legislation (and any successor legislation as it is updated and amended):

- Freedom of Information (Scotland) Act 2002
- Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004
- Environmental Information (Scotland) Regulations 2004
- Re-Use of Public Sector Information Regulations 2015
- Data Protection Act 2018 / UK GDPR
- Data Use and Access Act 2025

2. Statement of Intent

- 2.1. East Lothian Council is committed to transparency about the way in which it operates and makes decisions and will favour disclosure of information whenever possible.
- 2.2. The Council will ensure that the public will have a general right of access to the information it holds, subject to certain conditions and exemptions.
- 2.3. The Council will adopt and maintain a publication scheme, approved by the Scottish Information Commissioner, which relates to the publication of information by the Council.
- 2.4. The Council will ensure that training (including refresher training) is provided to officers who may be required to provide information, and that these officers are familiar with the requirements of information legislation.
- 2.5. The Council recognises its obligations to make information readily available and does not want charges to prohibit this right of access to information. There may be situations, however, where it is appropriate to charge for the production of information. The Council will ensure that the basis for any such charges is reasonable, transparent and applied in compliance with the relevant legislation.

3. Scope

- 3.1. This Policy applies to all Council staff.

- 3.2. Where Elected Members work on behalf of the Council, this Policy applies to them. This Policy excludes constituency or party political work carried out by Elected Members.

4. Definitions

In this document,

- 4.1. 'DPA' or 'DPA2018' means the Data Protection Act 2018;
- 4.2. 'EIRs' means the Environmental Information (Scotland) Regulations 2004;
- 4.3. 'FOISA' or 'FOI' means the Freedom of Information (Scotland) Act 2002;
- 4.4. 'ICO' means the UK Information Commissioner, who is the regulator in the entire United Kingdom for matters relating to compliance with data protection legislation;
- 4.5. 'ROPSI' means the Re-use of Public Sector Information Regulations 2015;
- 4.6. 'SAR' means Subject Access Request, i.e. an individual's request for their own personal information;
- 4.7. 'Section 60 Code of Practice' means the Code of Practice produced by Scottish Ministers to describe best practice for Scottish public authorities to follow in discharging their functions under FOISA and the EIRs;
- 4.8. 'Section 61 Code of Practice' means the Code of Practice produced by Scottish Ministers to describe best practice in records management to support compliance with FOISA and the EIRs;
- 4.9. 'SIC' means the Scottish Information Commissioner, who is the regulator in Scotland for matters relating to compliance with FOISA and the EIRs;
- 4.10. 'UK GDPR' means the UK General Data Protection Regulation.

5. Roles and Responsibilities

- 5.1. **All staff** are responsible for:
- undertaking mandatory training on how to handle information requests;
 - forwarding relevant information requests to the Freedom of Information and Subject Access Request mailboxes for processing;
 - searching for and producing requested information promptly in line with statutory timescales;
 - maintaining a record of searches conducted and sharing this with the Customer Feedback and FOI team.
- 5.2. The **Customer Feedback and FOI team** is responsible for:

- receiving and processing requests for information via relevant email mailboxes and the Customer Portal;
- communicating with requesters about the progress of their request;
- providing advice and assistance to requesters in making valid requests;
- providing guidance to internal staff on the execution of relevant procedures;
- redacting exempted data from disclosures;
- issuing responses to information requesters;
- developing and promoting the Council's Publication Scheme;
- monitoring, promoting and reporting on compliance with statutory timescales, the Section 60 Code of Practice and the online guidance produced by regulators;
- liaising with relevant regulators.

5.3. The **Reviewing Officers** are responsible for:

- undertaking internal reviews of the Council's EIR and FOI responses as requested and in line with internal and online guidance and the Section 60 Code of Practice;
- drafting and issuing Review responses in line with statutory timescales.

5.4. **Heads of Service** are responsible for:

- Acting as Reviewing Officers or nominating Reviewing Officers within their Service areas;
- Promoting active contribution to the Publication Scheme by their Services.

5.5. The **Governance Service management team** is responsible for:

- producing submissions for the SIC on behalf of the Council in response to appeals lodged by applicants;
- providing ad hoc advice and guidance on compliance with information legislation;
- liaising with the SIC as required.

5.6. The **Data Protection Officer** and/or their deputy is responsible for:

- reviewing the Council's responses to Subject Access Requests if requested by applicants;
- advising on the application of exemptions to disclosure under the DPA2018;
- advising on the application of exemptions to the Data Protection Principles under the DPA2018 (also known as "Schedule 2 requests");
- advising on the application of escalated measures including (but not limited to) the serious harm test and 'complex' classifications;
- liaising with the ICO as required.

6. Statutory Framework

6.1. Information legislation provides right of access to three main types of information, with limited exceptions. The pieces of legislation work together: the EIRs enable access to environmental information; the DPA enables access to one's own personal data, and FOISA enables access to all other information. ROPSI provides a legal gateway for third

parties to re-use information held by the Council, where the Council holds the intellectual property rights in the information.

- 6.2. Requests for an individual's own personal data are called Subject Access Requests, or SARs, and they correspond to the individual's 'right of access' under the UK GDPR. Individuals are normally only entitled to receive copies of their own information, and information relating to third parties is exempt from disclosure. A number of other exemptions under the Data Protection Act may also apply.
- 6.3. The Council may also receive requests for third-party personal data from agencies such as Police, professional regulatory bodies and tax authorities. This information may be lawfully disclosed in line with the relevant legal gateways and exemptions in the DPA, subject to the Council's 'Schedule 2' handling procedures.
- 6.4. Requests for environmental information are handled under the EIRs. 'Environmental information' includes information about the elements and factors of the environment, and is fully defined in Regulation 2 of the EIRs.
- 6.5. Requests for any information that is not personal data or environmental information may be handled under FOISA.
- 6.6. ROPSI applies to the re-use of documents by third parties where the Council owns the relevant intellectual property rights and the documents are supplied as part of the Council's Public Task.¹ ROPSI does **not** apply to any part of a document which is accessible under information access legislation, such as FOISA or the EIRs.
- 6.7. ROPSI also does not apply to information which is exempt from disclosure under FOISA or the EIRs, apart from information that is subject to s.25 of FOISA, which relates to information that is already readily accessible to the requester (for example because it is published on the Council's website).

7. East Lothian Council Policy Framework

- 7.1. This Policy supersedes the following Council Policy documents:
 - Freedom of Information and Environmental Information Regulation Policy
 - Information Charging Policy – May 2017
 - Schedule of Fees – prior to November 2025
- 7.2. This Policy should be read with reference to the:
 - Data Protection Policy
 - Information and Records Management Policy
 - Records Management Plan
 - Internal guidance and procedures for staff on the Council Intranet

¹ Please note that the Council's Public Task under ROPSI is different from the lawful basis 'public task' under the Data Protection Act 2018 / UK GDPR, Article 6(1)(e).

8. Receiving Requests

- 8.1. Any written request for information could be in scope of the information legislation; the applicant does not need to state 'this is an FOI request' or 'this is a Subject Access Request' in order for information legislation to apply. If in doubt, staff should seek guidance from the Customer Feedback and FOI team.
- 8.2. The information in scope of a statutory information request includes **all recorded information, in any location and in any format**. This includes information that may be difficult to retrieve, for example data on back-up tapes, email accounts belonging to departed staff, or information in chats and phone messages. All staff are required to maintain effective records management controls to ensure compliance.²
- 8.3. All information requests received by Council employees (including School staff) must be sent promptly to the correct mailboxes for processing. Strict statutory timescales apply to requests:

Request type	Statutory response timescale	Mailbox
Freedom of Information request ('FOI')	20 working days	foi@eastlothian.gov.uk
Environmental Information request ('EIR')	20 working days (may in very limited cases extend another 20 working days)	foi@eastlothian.gov.uk
Internal Reviews under FOISA or EIRs	20 working days	foi@eastlothian.gov.uk
Re-Use of Public Sector Information Regulations request ('ROPSI')	20 working days	foi@eastlothian.gov.uk
Subject Access Request ('SAR')	1 calendar month (may in some cases extend to 3 calendar months)	sar@eastlothian.gov.uk
Schedule 2 request	No statutory timescale	sar@eastlothian.gov.uk

Failure to comply with statutory timescales may result in enforcement action by regulators.

- 8.4. Anyone can make a request for information to the Council under the information legislation, regardless of their nationality, location or motive. A requester is not required to state the purposes for their request.
- 8.5. If the Council receives a request for information which it does not hold, but which it knows is held by another public authority, the Council will provide as much assistance

² For more information on effective records management, refer to the Council's Records Management Plan, the Information and Records Management Policy and intranet guidance. The Section 61 Code of Practice on Records Management, produced by Scottish Ministers, also provides a framework for effective records management in the context of FOISA and the EIRs.

as possible to the applicant in transferring their request to the other authority. This may be by simply directing them to the appropriate public authority or, for environmental information, by transferring the request directly to the other authority, informing the applicant if this is to be done.

- 8.6. The Council will as soon as possible, but within no more than 2 working days, acknowledge receipt of an information or review request. If the request does not provide sufficient detail to allow the Council to identify the information, the Council will request clarification as quickly as possible but in any event no later than the statutory deadline for response.

8.7. **Valid/Invalid requests**

Freedom of Information

- 8.7.1. For a FOISA request to be valid, it must:

- Be in writing or other recorded form (e.g. audio recording);
- State the name of the applicant and an address for correspondence (email address is acceptable); and
- Describe the information requested.

In general, a request posing a question with a simple 'yes/no' answer will not be considered a valid request for information under the Act, although the Service might choose to respond as a 'business as usual' ('BAU') request .

Environmental information

- 8.7.2. Under the EIRs, a request for environmental information may be made in any form, including verbally.

Personal data

- 8.7.3. Subject Access Requests can be made in any form, including verbally. Valid requests must be accompanied by information that confirms the requester's identity, for example a driver's license. The Council is not obliged to respond to a SAR until it is satisfied that the requester is who they say they are.

8.8. **Advice and assistance**

- 8.8.1. When handling FOI and EIR requests, the Council will provide advice and assistance to requesters at all stages of a request, tailored to the particular request, so far as a reasonable person would expect. The Council shall at all times have regard to its duties under equalities legislation to ensure accessibility for all.

- 8.8.2. If the Council receives an invalid request for information, it will provide the requester with advice and assistance in how to make a valid request.

8.9. Requests for clarification

- 8.9.1. If the Council receives a valid request for information, but needs more information from the requester to identify and locate the information, it will ask the requester for clarification as soon as reasonably possible and in any case before the statutory deadline for response.
- 8.9.2. For all statutory information requests, once the Council requests clarification, the statutory deadline for response will be suspended until clarification from the requester is received.

9. Responding to Requests

- 9.1. The Council will provide a formal response as soon as possible, but no later than the statutory deadline. This response will either:
- Provide the information requested;
 - Decline to disclose the information requested, citing the relevant exemption, the reasoning behind decision to apply the exemption, and (where applicable) why the public interest in withholding the information outweighs the public interest in disclosing it; or,
 - Advise the requester that the Council will be applying an extension, citing the relevant statutory grounds.
- 9.2. In circumstances where information may be disclosed only in part, the Council shall securely redact the exempted data to an appropriate technical standard.
- 9.3. **Council officers are not expected to create new information** in order to respond to requests, and responses will be consistent with the wording of the request. If the Council does not hold the information requested in a recorded form at the time of the request, a response of 'information not held' will be returned. The collation of recorded data from multiple sources is not considered to be 'creating' new information, and such information will be considered in scope if it is held at the time of the request.
- 9.4. In circumstances where the Council holds information that was created by a third party, the Council will (as far as possible) consult with that third party to seek their views on disclosure of the information requested and any possible impact of disclosure. The decision on whether to disclose the information, however, rests with the Council alone.
- 9.5. If the Council decides to withhold the information requested or decline to respond, it will cite the relevant statutory exemption in its response. The response will also advise the applicant on next steps and how to contact the relevant regulator if they remain unhappy with the Council's response.

Request type	Regulator
Freedom of Information request ('FOI')	Scottish Information Commissioner ('SIC')
Environmental Information request ('EIR')	Scottish Information Commissioner ('SIC')
Re-Use of Public Sector Information Regulations request ('ROPSI')	UK Information Commissioner's Office ('ICO')
Subject Access Request ('SAR')	UK Information Commissioner's Office ('ICO')
Schedule 2 request	UK Information Commissioner's Office ('ICO')

10. Charging for Information

10.1. The laws for charging for information requests are similar to each other, but not the same. Charging regimes differ between FOISA, the EIRs and ROPSI. This section sets out these key differences for the purposes of calculating and applying fees for information requests.

10.2. The Council is not permitted to charge for requests made under data protection legislation, including Subject Access Requests.

10.3. See [Appendix 2](#) for a decision tree on applying fees.

10.4. Freedom of Information charges

10.4.1. In certain circumstances, the Council may charge a fee to produce information requested under FOISA. The method of calculating charges is defined by the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. The Council does not have discretion to modify this statutory charging regime.

10.4.2. The Council is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information.

10.4.3. The Council is not entitled to charge for any costs incurred in determining whether it actually holds the information. Similarly, the Council is not entitled to charge for any costs incurred in determining whether an exemption from disclosure should be applied.

10.4.4. Charges may only be applied if the projected costs of complying with a written request for information exceed £100. The fee will be 10% of the difference between the projected costs and £100.

10.4.5. When estimating the costs of complying with a written request for information, a maximum rate of £15 per hour of staff time is permitted. If the work can reasonably be done by a member of staff on a lower grade of pay, then the calculations must reflect the cost of that lower grade. Charges for a person's time should not be rounded up to the hour, but should be expressed as a fraction of an hour if only a fraction is expected to be required.

10.5. EIR charges

- 10.5.1. In certain circumstances, the Council may charge a fee to produce information requested under the EIRs. These charges shall be in accordance with Regulation 8 of the EIRs. The Council has some discretion to determine the method of applying reasonable fees, with reference to the SIC's guidance and decisions (see [Appendix 3](#) for links).
- 10.5.2. Each EIR request shall be assessed on a case-by-case basis to determine whether charges should be applied in line with the charging guidelines below. The Council shall not adopt a blanket approach to charging in relation to EIRs. When in doubt, staff should consult with the Council's Customer Feedback and FOI team for advice on charging.
- 10.5.3. Charges shall not be applied such that requesters are dissuaded from seeking to obtain environmental information. The Council shall regularly record statistics regarding charging as part of its case handling statistics.
- 10.5.4. The Council will not normally require payment of fees in advance. If the Council does need to request payment in advance, it will do so in limited circumstances only.
- 10.5.5. The Council will publish its Schedule of Fees, including information on the circumstances in which a fee may be charged, waived or required to be paid in advance. The Charging Guidelines in section 10.5.8 below shall form the basis for the Schedule of Fees.
- 10.5.6. The [Schedule of Fees](#) is appended to this Policy and will be updated annually.
- 10.5.7. Any charges applied shall not exceed a reasonable amount and in any case shall not exceed the costs to the Council of producing the information requested. The term 'reasonable' is not defined in the EIRs, but for the purposes of this Policy the following guidelines should be considered in deciding whether to apply a charge and whether the charge is reasonable.

10.5.8. EIR Charging Guidelines

Fees may apply:	Reasonable fees are based on:
Where the costs to the Council exceed the average cost of an appeal, provided that the overall fee is proportionate to the volume and type of data requested.	Staff costs at the rate of the lowest grade having the necessary knowledge, skills and competencies to produce the information. If the work can reasonably be done by a member of staff on a lower grade of pay, then the calculations must reflect the cost of that lower grade. Charges for a person's time should not be rounded up to the hour, but should be expressed as a fraction of an hour if only a fraction is expected to be required.
Where the Council makes the environmental information available on a commercial basis, and this income is necessary to guarantee the collection and publication of the information.	Market-based fees
Where there is a cost incurred by the Council in order to locate and retrieve files, for example by ordering paper files from off-site storage or for scan-on-demand services. Such a fee will only apply if the information is not already published online or routinely made available to the public (see the table setting out when fees will not apply below).	Costs of retrieval and transport, including staff time to the extent that it is required to locate and retrieve the information.
Where there is a cost incurred by the Council in order to photocopy, print and/or post information in order to comply with the request. The Council will by default provide data in the least costly format, unless otherwise requested by the applicant.	Materials, postage costs, and staff costs at the rate of the lowest grade having the necessary knowledge, skills and competencies to produce the information.
Where there is a cost incurred by the Council in order to redact exempt information.	Staff costs at the rate of the lowest grade having the necessary knowledge, skills and competencies to produce the information.

Fees will not apply:
For time spent determining whether information is held.
For time spent determining whether information is subject to an exception for disclosure.
For any costs incurred in relation to a request for information that is not held.
For access to public registers or lists if they are already published or otherwise made publicly available for the purposes of inspection (except where there is a fee set by other legislation.)
If the information is not already published, the Council may charge a fee for location and retrieval (see above re: location and retrieval fees).
If the Council has not published a Schedule of Fees.
If the Council decides to waive fees: • In order to ensure that financial barriers do not form an impediment to access to information; • On the basis that the chargeable fees are less than the average cost of an appeal; • On the basis of the request handler's or Reviewing Officer's discretion.

Examples:

- 1- Jane Doe emails the Council's Planning Service asking for a copy of a Planning policy. The Planning policy is already published on the Council website. The Council should advise the requester that, in line with Regulation 6(1)(b) of the EIRs, the information is already publicly available and easily accessible on the Council website. The Council should **not** apply a charge in relation to this request.

- 2- John Smith telephones the Council asking for a copy of a Planning Application. The Planning Application is held in paper format only, and it consists of several volumes held in a secure off-site records store which is not accessible to the public. Because it would be costly to scan or copy the file, the Council can offer to produce the file for the requester to view on-site in Council premises. The Council **may** charge a reasonable fee to cover the costs of retrieving the information, but is not required to do so.

- 3- The Council receives a request for information about the inspection of road conditions and associated costs over a 10-year period. Newer information about road inspections is held in a database, but older information is held in different places including paper files, spreadsheets, folders on the file network, and emails owned by departed members of staff. All of this information falls within the scope of the request. The Council **may** charge a fee in relation to this request, but is not required to do so. In order to determine what charges are reasonable, the Service will need to consider:
 - The actual total costs to the Council to produce the information (including consideration of whether the request might meet the tests for applying the 'manifestly unreasonable' exception);
 - The staffing cost threshold as indicated in the Schedule of Fees;
 - Whether all efforts have been made to minimise costs;
 - Whether a fee waiver might apply.

10.6. ROPSI charges

- 10.6.1. In certain circumstances, the Council may charge a fee to produce information requested under ROPSI. These charges shall be in accordance with Regulation 15 of ROPSI.
- 10.6.2. The Council is only permitted to charge for the marginal costs of reproducing, providing and disseminating information under ROPSI, apart from documents produced by libraries, museums and archives.
- 10.6.3. For libraries, museums and archives, income from ROPSI charges must not exceed the aggregate of direct costs, a reasonable apportionment of indirect and overhead costs attributable to the chargeable activity, and a reasonable return on investment.

11. Publication Scheme

- 11.1. Proactive publication of Council information is a key element of compliance, enhancing transparency and reducing the administrative burden on Council staff of responding to ad hoc requests.
- 11.2. The Council is legally required to have a Publication Scheme under FOISA. The Publication Scheme must include, at minimum, information about:
- The Council's functions, how it operates (including decision-making processes) and its performance; and
 - The Council's finances, including funding allocation, procurement and the awarding of contracts.
- 11.3. All Council Services should regularly and proactively publish information about their activities by liaising with the Information Governance team.

12. Third-Party (Schedule 2) Personal Data Requests

- 12.1. Council officers regularly receive requests for third-party personal data from external agencies such as Police, HMRC, professional regulators, etc. This information can be lawfully disclosed as long as:
- there is a lawful basis for the data processing under Article 6 of the UK GDPR and/or Schedule 1 of the Data Protection Act 2018 (for special category and criminal offence data);
 - the data is being requested for one or more of the purposes listed in Schedule 2 of the Data Protection Act 2018, which sets out exemptions to the Data Protection Principles;

- the data requested is relevant, necessary and proportionate to the purposes of the request and this is clearly evidenced by the requester.

12.2. One-off requests for third-party personal data should be forwarded to the Customer Feedback and FOI team for processing, **unless the request is part of regular data sharing covered by a data sharing agreement or protocol**, in which case the data may be shared directly by the Service area via secure channels.

12.3. Council officers are not obliged to disclose personal data to third parties unless or until they are satisfied that the purposes for the request are lawful and the requester has demonstrated that the data requested is relevant, necessary and proportionate to those purposes.

13. Malicious/Vexatious Requests

13.1. From time to time, the Council will receive requests that are unreasonable, not serious in nature, malicious or otherwise have a disproportionate impact on Council resources with a corresponding detriment to the Council's ability to deliver public services. In these circumstances, the Council may decline to respond to a request.

13.2. The Council will not decline a request lightly. Council staff must consider all the relevant circumstances to reach a balanced conclusion as to whether the Council should decline to provide the information requested.

13.3. Each statutory regime has different definitions of the circumstances where the Council may decline a request. Staff should refer to the statutory guidance issued by the relevant regulator to inform their decision on whether to decline a request. See [Appendix 3](#) for relevant links.

13.4. Any response stating that the Council declines to provide the information requested must include an explanation of the reason for declining, citing the appropriate legal exemption.

13.5. **Council officers must keep records of their decision-making process when declining to respond to an information request.** It is likely that such a response will be challenged by the requester, and the Council may be called upon to evidence its decision by the relevant regulator.

13.6. There is no prescriptive definition of what makes a request malicious, vexatious, or excessive. The following considerations are not exhaustive, but they may be relevant in considering whether the Council should decline to respond:

FOISA requests (Section 14)	• Responding would impose a significant burden on the Council; • The request does not have a serious purpose or value; • The request is designed to cause disruption or annoyance to the Council;
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	• The request has the effect of harassing the Council; • The request would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
EIR requests (Regulation 10(4)(b))	• All points noted above in relation to FOISA; and • An extension of an additional 20 working days is not sufficient to make dealing with the request manageable; • The public interest in withholding the information is greater than the public interest in disclosing it.
SARs	The request is clearly unreasonable when considering all the circumstances of the request, including: • the nature of the requested information; • the context of the request and the relationship between the Council and the individual; • whether a refusal to provide the information or acknowledge if it is held may cause substantive damage to the individual; • the Council's available resources; • whether the request largely repeats previous requests and a reasonable interval hasn't elapsed; or • whether the request overlaps with other requests.

- 13.7. For FOISA and EIR requests, it is the request that is considered vexatious, not the requester. This means that any request must be judged on its own merits. As a general principle, an applicant's history of contact with the Council will only be relevant insofar as it demonstrates that a request lacks serious purpose or value, or that it is intended to cause disruption, based on clear evidence.

East Lothian Council

Schedule of Fees for Information Requests

1.0 What we charge for:

- 1.1 In some cases, we may choose to apply charges to make information available. These charges will never exceed the costs to us to produce the information requested.

Charges may include:

- Staff time associated with locating and retrieving information;
- Staff time associated with preparing and redacting documents;
- Scanning;
- Photocopying;
- Postage;
- Transport/retrieval fees (where relevant for access to paper files).

- 1.2 If you request environmental information, charges may be applied in line with the Environmental Information (Scotland) Regulations 2004. While there is no upper fee limit, we may decline to provide environmental information if the request is deemed to be manifestly unreasonable.

- 1.3 If you request any other kind of (non-personal) information, charges may be applied in line with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. We may decline to provide this information if the total costs to us exceed £600.

- 1.4 We will never charge for access to personal data.

2.0 Calculation of charges:

- 2.1 Staff costs will be charged on the basis of the actual cost of employing the staff in question for the time spent retrieving the information requested.

- 2.2 The information will be located and retrieved by the lowest-graded member of staff available who holds the required skills and knowledge to provide the information requested. Salary scales will apply.

- 2.3 For Freedom of Information requests, the rate applied to staffing costs will not exceed £15 per hour.

- 2.4 For Environmental Information requests, we will only charge in relation to staffing costs where the total costs to us exceed the EIR charging threshold in Section 6.0 below, provided that the overall fee is proportionate to the volume and type of data requested. We may charge in relation to scanning, photocopying, postage and/or transport and retrieval fees even if the total fees are less than the EIR charging threshold.

For example: if you wish to view a Planning file, and the file only exists in paper format, we may offer you the opportunity to view the file on-site in Council offices. We may apply a modest charge to recoup the costs of retrieval and transport of the file.

- 2.5 The Council will offer the most cost-efficient method of providing the information.

3.0 Timescales:

- 3.1 We will not normally require payment of fees in advance. If we do need to request payment in advance, we will do so in limited circumstances only.
- 3.2 If we assess that a fee is payable in relation to your request, we will give you written notice of this before the statutory deadline for response and provide you with a Fees Notice setting out the amount to be paid.
- 3.3 You will have 60 working days to pay the full amount. If we do not receive payment within this timescale, we will conclude that you no longer require the information and we will close the request.
- 3.4 During the period of payment notice, the compliance timescale will pause and will only start again once the fees have been paid in full.
- 3.5 In the event that we find that it has cost less to provide the information than advised in the Fees Notice, we will arrange a refund of your overpayment.

4.0 Free inspection:

- 4.1 We will make available our public registers of environmental information free of charge in accordance with the Environmental Information (Scotland) Regulations 2004. This provision only applies where registers or lists are publicly accessible (for example online).
- 4.2 You may also examine these public registers within Council offices free of charge, although you will need to provide prior notice.
- 4.3 We may also offer you the opportunity to view information on-site that is not in public registers, for example where the information would be costly to reproduce. In these instances we may still charge for the location and retrieval of the information, as well as any costs associated with scanning and/or photocopying.

5.0 Unhappy with fee charges?

- 5.1 If you are unhappy with a Fees Notice, you may ask us to review our decision about how much we are charging you for the information. Your Fees Notice will tell you how to do this.

APPENDIX 1 – SCHEDULE OF FEES

- 5.2 A request for review must be received within 40 working days of the date that you receive our Fees Notice. The review request must be in writing (e-mail accepted) or another permanent format and should be addressed to:

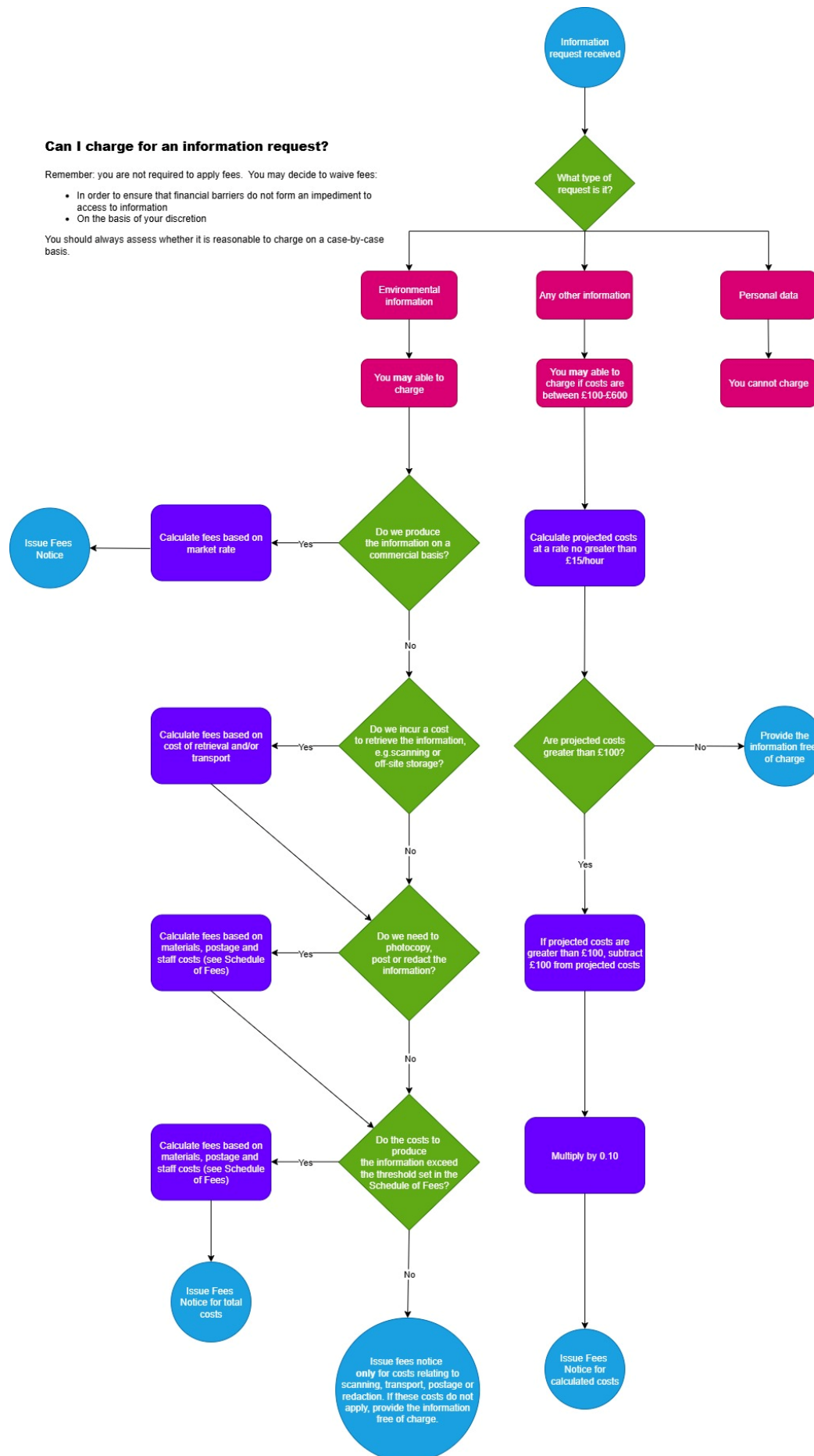
Customer Feedback and FOI Team
People and Governance
East Lothian Council John Muir House Haddington
EH41 3HA
foi@eastlothian.gov.uk

- 5.3 Once we receive your request we have 20 working days from the date of receipt in order to complete our review of the fee amount and give you our decision.
- 5.4 If you remain unsatisfied with the Council's response, you may ask the Office of the Scottish Information Commissioner (OSIC) to investigate the matter. You must appeal to the Commissioner within six months of receiving the review decision.

6.0 Fees

Year:	2025-26
Date effective:	01 December 2025
EIR threshold for staffing costs:	£250.00
Staff grade:	Hourly rate:
Grade 3 - Administration	£17.12
Grade 4 - Administration	£19.11
Grade 5 - Administration	£21.32
Grade 6 – Administration	£23.94
Grade 7 – Senior Administration	£27.41
Grade 8 - Officer	£30.24
Grade 9 – Officer	£34.44
Grade 10 – Officer	£40.11
Grade 11 - Officer/Manager	£46.41
Grade 12 - Officer/Manager	£54.08
Grade 13 - Service Manager	£62.58
Photocopying costs:	Rate:
Black and White copy	See Charges Book
Colour Copy	See Charges Book
Large scale black and white documents	See Charges Book
Copies of Planning/Building Standards drawings	See Charges Book
Copies of Decision Notices/Completion Certificates	See Charges Book
Access to paper files:	Rate:
Planning and Building Standards file retrieval	See Charges Book
Postage:	
Charged at full cost recovery to the Council of sending the information via Royal Mail or Courier.	

APPENDIX 2 – CHARGING DECISION TREE



LEGISLATION	GUIDANCE
FOISA and the EIRs	
Compliance with FOISA and the EIRs is regulated by the Scottish Information Commissioner ('SIC'). Guidance on compliance and the application of exemptions is available on the SIC's website:	https://www.foi.scot/briefings-and-guidance
Access the full text of the Freedom of Information (Scotland) Act 2002:	https://www.legislation.gov.uk/asp/2002/13/contents
Access the full text of the Environmental Information (Scotland) Regulations:	https://www.legislation.gov.uk/ssi/2004/520/contents
Data Protection and ROPSI	
Compliance with the DPA2018 / UK GDPR, Data Use and Access Act 2025 and ROPSI is regulated by the UK Information Commissioner ('ICO'). Guidance on compliance and the application of exemptions is available on the ICO's website:	https://ico.org.uk/
Access the full text of the Data Protection Act 2018:	https://www.legislation.gov.uk/ukpga/2018/12/contents
Access the full text of the UK GDPR:	https://www.legislation.gov.uk/eur/2016/679/contents
Access the full text of the Data Use and Access Act 2025:	https://www.legislation.gov.uk/ukpga/2025/18/contents
Access the full text of the Re-use of Public Sector Information Regulations (2015):	https://www.legislation.gov.uk/uksi/2015/1415/contents

