

Freedom of Information Policy

Reference: RR/HR

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Trust Schools	Redhills Primary Shaldon Primary Collaton St Mary Galmpton Primary	Totnes St John's Brixham Primary

Who Should use this Policy?

This Policy sets out the Framework for how the Academy for Character and Excellence manages its obligations under the Freedom of Information Act, in terms of responding to written requests from the public and publishing certain information about its activities through the Freedom of Information Act Publication Scheme.

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John 10:10

I have come that they may have life, and have it to the full.

Our school’s approach to this policy follows that of the Church of England Education Office in that it seeks to be faith-sensitive and inclusive. It is underpinned by Our Vision of ‘*Life in all its fullness*’ and ensures that all of school life incorporates the values of the Christian Faith. These values are central to all that we do and determine how we will implement all policies and procedures. We want to ensure that through our gateways of citizenship, leadership, expression, exploration and flourishing, all pupils and adults are shown how to be compassionate, passionate, honest, inspiring and responsible individuals. By starting with our vision, we aim to ensure that all members of our school community understand our expectations, our practise and the ways in which we will implement this Policy.

1 GENERAL PRINCIPLES

This is the policy of the Academy for Character and Excellence in order to comply with its obligations under the Freedom of Information Act 2000 (**FOIA**). The Trust supports the principles of freedom of information and has a policy aim to be an open and transparent organisation in a way that is consistent with the law.

- 1.1 This policy sets out:
 - 1.1.1 The classes of information which the Trust publishes or intends to publish;
 - 1.1.2 The manner in which the information will be published;
 - 1.1.3 Whether the information is available free of charge or on payment.
- 1.2 This covers information already published and information which is to be published in the near future. All information in the Trust's publication scheme is either available on its website to download and print off or available in paper form.
- 1.3 It may not be possible to provide some information because it is legally privileged, confidential or another exemption applies.
- 1.4 Further individuals may make requests for specific types of information:
 - 1.4.1 Freedom of information requests.
 - 1.4.2 Subject access requests
 - 1.4.3 Requests for education records

2 CATEGORIES OF INFORMATION PUBLISHED

- 2.1 The classes of information that the Trust undertakes to make available are organised into five broad topic areas:
 - 2.1.1 Class 1: Who we are and what we do
 - 2.1.2 Class 2: What we spend and how we spend it
 - 2.1.3 Class 3: What our priorities are and how we are doing against them
 - 2.1.4 Class 4: How we make decisions
 - 2.1.5 Class 5: Our policies and procedure
- 2.2 Generally, where possible information will be provided on our website and this will include information as required by law together with information which can be appropriately provided.

3 REQUESTS FOR INFORMATION

- 3.1 If you would like to make a request under the FOIA, please:
- 3.1.1 make the request in writing (this includes email or fax)
 - 3.1.2 state the enquirer's name and correspondence address (email addresses are allowed);
 - 3.1.3 describe the information requested - there must be enough information to be able to identify and locate the information.
- 3.2 You do not have to explain why you want the information or state that it is a FOI request, but it may help us to reply to your request more promptly if you let us know that it is a FOI request.
- 3.3 The Trust will endeavour to respond to any requests promptly and in any event within the legally prescribed limit of 20 working days (excluding non-school days). Where the 20th day to respond to a request is during a non-school day, we will have up to 60 days to respond. The response time starts from the time the request is received. Where we need to ask you for more information to enable us to answer, the 20 days start time begins when this further information has been received.
- 3.4 If a qualified exemption applies (see Appendix 3) and we need more time to consider the public interest test (see Appendix 4), we will reply within the 20 days stating that an exemption applies and include an estimate of the date by which a decision on the public interest test will be made.
- 3.5 The Trust aims to respond to FOIA requests free of charge. However, if your request means that we have to incur significant costs, e.g. a significant amount of photocopying, printing, paying a large postage charge, or a request for a priced item such as some printed publications or DVDs, we will let you know the cost before fulfilling your request. Information will be charged at the actual cost of providing it (e.g. the cost of photocopying, plus time of employee photocopying information, plus postage and any other actual costs incurred as a result of providing the requested information). If we need to charge for providing the information, we will require payment before we can provide the information.
- 3.6 Where we have notified you that a charge is to be made, the response time stops until payment is received and then continues again once payment has been received.

4 SUBJECT ACCESS REQUESTS

- 4.1 All staff, parents and other users are entitled to:
- 4.1.1 Know what information the School/Trust holds and processes about them or their child and why.
 - 4.1.2 Know how to gain access to it.
 - 4.1.3 Know how to keep it up to date.
 - 4.1.4 Know what the School/Trust is doing to comply with its obligations under the Data Protection Act 2018 (**2018 Act**) and the General Data Protection Regulation.

- 4.2 All staff, parents and other users have a right under the 2018 Act to access certain personal data being kept about them or their child either on a computer or in certain files. If any such request is made, please contact a senior leader as information should be provided within certain time scales. Please note that a charge may be made for compliance with such a request. Some exemptions apply and if so, you will be informed.
- 4.3 If any complaint is made in respect of any matter in relation to personal data then this should be raised with a senior leader. (Please also refer to the Trust's GDPR Policy and privacy notices)

5 REQUESTS FOR EDUCATIONAL RECORDS

Parents have separate rights in law to request educational records. Any such request should be made to the school in the first instance.

6 THE INFORMATION COMMISSIONER

- 6.1 If there are any concerns about the operation of this policy, then they should be raised with the Trust's DPO in the first instance.
- 6.2 If there are complaints about this policy or breaches of data protection then they may be raised with the Office of The Information Commissioner see <https://ico.org.uk/> for information.

7 POLICY AND PRINCIPLES

1. Scope of the FOIA

- 1.1. The FOIA covers all recorded information held by the Trust. It is not limited to official documents and it covers, for example, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information that has been created, so it also covers, for example, letters received from members of the public, although there may be a good reason not to release them.
- 1.2. Requests for recorded information about the handling of previous freedom of information requests (meta-requests) should be treated no differently from any other request for recorded information.
- 1.3. The FOIA does not cover information that is in someone's head. If a member of the public asks for information, information only has to be provided that is already in recorded form. The Trust does not have to create new information or find the answer to a question from staff who may happen to know it.
- 1.4. FOIA covers information that is held on behalf of the Trust. For example, certain types of work are outsourced to another provider.
- 1.5. Outsourced services undertaken by an external company may hold information on the

Trust's behalf. Some of the information held by the external company may be covered by the FOIA if a freedom of information request is received. The company does not have to answer any requests for information it receives, but they may forward requests to the Trust.

- 1.6. The FOIA does not cover information the Trust holds solely on behalf of another person, body or organisation. This means employees' purely private information is not covered, even if it is on a work computer or email account; nor is information stored solely on behalf of a trade union, or an individual Local Committee member or Director.

2. FOI Publication Scheme

2.1. The Trust has adopted the Model Publication Scheme (**Scheme**) for Schools approved by the Information Commissioner and as set out in Appendix 1. The Scheme commits the Trust to making information available to the public as part of its normal business activities. The information covered is included in classes of information, where this information is held by the Trust.

2.2. The Scheme commits the Trust to:

- a. specify the information which is held by the Trust and falls within the classifications;
- b. 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;
- c. review and update on a regular basis the information the Trust makes available under the Scheme;
- d. make the Scheme available to the public;

3. Responding to Information Requests

3.1. The Trust recognises its duty to:

- a. provide advice and assistance to anyone requesting information. The Trust will respond to straight forward verbal requests for information, and will help enquirers to put more complex verbal requests into writing so that they can be handled under the FOIA;
- b. tell enquirers whether or not the Trust holds the information they are requesting (the duty to confirm or deny), and provide access to the information the Trust holds in accordance with the procedures laid down in Appendix 2.

3.2. Managing Information Requests

- a. The Data Protection Officer is responsible for responding to information requests that relate to the Trust as a whole, rather than to a specific School. They are also responsible for overseeing the application of this policy, co-ordinating enquiries, leading on the any FOI complaints or requests to review decisions and is the lead for any advice, guidance or training.

- b. Schools are responsible for responding to information requests that relate to their school, however this is limited to responding to the initial requests. Any complaints or requests to review decisions have not been delegated, therefore should be referred to the Data Protection Officer. Each School within the Trust must appoint a person responsible for FOI information requests; this person must be notified to the Data Protection Officer.
- c. Schools are required to update the FOI request tracker database with any information requests that are received, to enable the Trust to have a complete overview and report on all FOI requests at Trust level.
- d. Requests must be made in writing, (including email), and should include the enquirer's name and correspondence address, and state what information they require. They do not have to mention the Act, nor do they have to say why they want the information. There is a duty to respond to all requests, telling the enquirer whether or not the information is held, and supplying any information that is held, except where exemptions apply.
- e. There is a time limit of 20 working days excluding non-school days for responding to a request and must be responded to in accordance to the procedures laid down in Appendix 2.
- f. Certain information is subject to either absolute or qualified exemptions. The exemptions are listed in Appendix 3. When applying a qualified exemption to a request, the public interest test procedures need to be invoked to determine if the public interest in applying the exemption outweighs the public interest in disclosing the information.
- g. Unless it is in the public interest to withhold information, it will be released. The Public Interest Test will be applied before any qualified exemptions are invoked. For information on applying the Public Interest Test see Appendix 4.

3.3. Charging

- a. The Trust reserves the right to refuse to supply information where the cost of doing so exceeds the statutory maximum, currently £450. See Appendix 5 for further information.

3.4. Recording Information Requests

- a. An FOI Tracker Database will be maintained, including where a refusal to request has been made. This will be maintained by the Data Protection Officer.

4. Complaints

- 4.1. If a member of the public is unhappy with the service they have received in relation to their request and wish to make a complaint or request a review of the decision, they should be asked to put it in writing to the Data Protection Officer using the following contact details. This should be provided in the letter sent out in response to the request:

Data Protection Officer

Rozel Ridgway

The Academy for Character and Excellence

Totnes St John's Primary School

Pathfields

Totnes

TQ9 5TZ

- 4.2. The Trust will aim to determine all complaints within 10 days of receipt. The complaint will be dealt with by the CEO, or the Chair of the Trust.
- 4.3. If on investigation the original decision is upheld, then the Trust has a duty to inform the complainant of their right to appeal to the Information Commissioner's office, which will be detailed in the response letter. Appeals should be made in writing to the Information Commissioner's office. They can be contacted at:

FOI/EIR Complaints

Resolution Information Commissioner's Office Wycliffe House

Water Lane Wilmslow Cheshire SK9 5AF

Appendix 1 – Publication Scheme

Publication Scheme – The Academy for Character and Excellence		
Information to be published	How the Information can be obtained	Charge
Who we are and what we do Organisational information, locations and contacts, constitutional and legal governance.		
Trust and School websites: Academy for Character and Excellence Shaldon Primary School Redhills Primary School Collaton St Mary Primary School Galmpton CofE Primary School Totnes St John’s CofE Primary School Brixham CofE Primary School	http://www.acexcellence.co.uk/ http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org/ http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org https://www.brixhamcofe.org/	None
Trustee names and contact details of the Trust board and the portfolios they hold	http://www.acexcellence.co.uk/	None
Trust Legal and Funding Documents:	http://www.acexcellence.co.uk/	None
Trust Scheme of Delegation	http://www.acexcellence.co.uk/	None
Trust Governance	http://www.acexcellence.co.uk/	None
Names of key personnel	http://www.acexcellence.co.uk/	None
Location and contact information	http://www.acexcellence.co.uk/	None
Conflict of Interest Register & Log	http://www.acexcellence.co.uk/	None

What we spend and how we spend it Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.		
Competitive Tendering Policy	http://www.acexcellence.co.uk/	None
Annual Report and Financial Statements	http://www.acexcellence.co.uk/	None
Audit Meeting terms of Reference and Meeting Minutes	Upon request through admin@acexcellence.co.uk	None
Pay Policy	http://www.acexcellence.co.uk/	None
Expenses Policy	http://www.acexcellence.co.uk/	None
What our priorities are and how we are doing Strategy and performance information, plans, assessments, inspections and reviews.		
Trust Meetings	Upon request through admin@acexcellence.co.uk	None
Strategic Plan	Upon request through admin@acexcellence.co.uk	None
Risk Register	Upon request through admin@acexcellence.co.uk	None
Audit Committee Meeting Terms of Reference and Meeting Minutes	Upon request through admin@acexcellence.co.uk	None
How we make decisions Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.		

Trust strategic board meetings including Finance, Audit and Risk committee	Upon request through admin@acexcellence.co.uk	None
Trust terms of reference for portfolio meetings	Upon request through admin@acexcellence.co.uk	None
Trust Scheme of Delegation	http://www.acexcellence.co.uk/	None
Governance Diagram	http://www.acexcellence.co.uk/	None
Our policies and procedures (Current written protocols, policies and procedures for delivering our services and responsibilities). Current information only.		
Trust Policies	http://www.acexcellence.co.uk/	None
Trust HR Policies	http://www.acexcellence.co.uk/	None
Lists and Registers Currently maintained lists and registers only		
Conflict of Interest Register & Log	http://www.acexcellence.co.uk/	None
The services we offer (Information about the services we offer, including leaflets, guidance and newsletters produced for the public and businesses).		
Trust News	http://www.acexcellence.co.uk/	None

Publication Scheme – School Information

Information to be published	How the Information can be obtained	Charge
<p>Who we are and what we do Organisational information, locations and contacts, constitutional and legal governance.</p>		
<p>School staff and structure – names of key personnel</p>	<p>Please refer to each individual school website under their staff section http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/ https://www.brixhamcofe.org/</p>	<p>None</p>
<p>Local committee members – names and contact details of the committee members and the basis of their appointment</p>	<p>Please refer to each individual school website under their governance http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/ https://www.brixhamcofe.org/</p>	<p>None</p>
<p>School session times, term dates and holidays</p>	<p>Please refer to each individual school website http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/ https://www.brixhamcofe.org/</p>	<p>None</p>
<p>Location and contact information</p>	<p>Please refer to each individual school website http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/ https://www.brixhamcofe.org/</p>	<p>None</p>
<p>Prospectus</p>	<p>Please refer to each individual school website http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/</p>	<p>None</p>

	https://www.brixhamcofe.org/	
What our priorities are and how we are doing Strategy and performance information, plans, assessments, inspections and reviews.		
School Development Plan	Upon request through admin@acexcellence.co.uk	None
OFSTED	https://www.gov.uk/government/organisations/ofsted	None
Pupil Premium	Please refer to each individual school website http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/ https://www.brixhamcofe.org/	None
Special Educational Needs	Please refer to each individual school website http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/ https://www.brixhamcofe.org/	None
How we make decisions Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.		
Local Committee Meeting Minutes	Upon request through admin@acexcellence.co.uk	None
Admissions/Admissions Policy	Please refer to each individual school website http://www.shaldonprimary.org https://www.redhillsprimary.org/ https://www.collatonstmaryprimary.org http://www.galmptonprimary.org https://www.totnesstjohnsprimary.org/ https://www.brixhamcofe.org/	None

Appendix 2 – Procedure for Dealing with Requests

When an information request is received, the following process needs to be followed, by answering the following questions.

1. *Is it a FOI request for information?*

A request for information may be covered by one, or all, of three information rights:

- a. Data protection enquiries (or subject access requests) are ones where the enquirer asks to see what personal information the school holds about the enquirer. If the enquiry is a Data Protection request, the Trust GDPR Policy must be followed.
- b. Environmental Information Regulations enquiries are ones which relate to air, water, and natural sites, built environment, flora and fauna, and health, and any decisions and activities affecting any of these. These could therefore include enquiries about recycling, phone masts, school playing fields, car parking etc. If the enquiry is about environmental information, follow the guidance on the ICO's or DEFRA website.
- c. FOI enquiries are concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the FOIA. All requests for information that are not data protection or environmental information requests are covered by the FOIA.

2. *Is this a valid FOI request for information?*

An FOI request should:

- a. be in writing, including email or FAX;
- b. state the enquirer's name and correspondence address (email addresses are allowed);
- c. describe the information requested - there must be enough information to be able to identify and locate the information; and not be covered by one of the other pieces of legislation.

In cases where the enquiry is ambiguous, assist the enquirer to describe more clearly the information requested. Where possible, establish direct contact. The aim is to clarify the nature of the information requested and not to determine the aims or motivation of the enquirer. If we notify the enquirer that we need further information to enable us to answer, we do not have to deal with the request until the further information is received. The response time limit starts from the date this is received.

Verbal enquiries are not covered by the FOIA. Such enquiries can be dealt with where the enquiry is relatively straightforward and can be dealt with satisfactorily. However, for more complex enquiries, and to avoid disputes over what was asked for, the enquirer must be asked to put the request in writing or email, when the request will then become subject to the FOIA.

3. Does the Trust hold the information?

“Holding” information means information relating to the business of the Trust which:

- a. the Trust has created, or
- b. the Trust has received from another body or person, or
- c. is held by another body on the Trust’s behalf.

Information means both hard copy and digital information, including email.

If the Trust does not hold the information, it does not have to be created or acquired just to answer the enquiry, although a reasonable search should be made before denying that the Trust holds this information.

4. Has the information requested already been made public?

If the information requested is already in the public domain, for instance through the Scheme or on a website, the enquirer should be directed to the information, with an explanation regarding how to access it.

5. Is the request vexatious or manifestly unreasonable or repeated?

The FOIA states that there is no obligation to comply with vexatious requests. This is taken to mean a request which is designed to cause inconvenience, harassment or expense rather than to obtain information, and would require a substantial diversion of resources or would otherwise undermine the work of the Trust. This however does not provide an excuse for bad records management.

6. Can the Trust transfer a request to another body?

If the information is held by another public authority, the Trust must first check that they hold it, then transfer the request to them. The enquirer should then be notified that the Trust do not hold the information and to whom the request has been transferred. The enquiry must be answered in respect of information the Trust does hold.

7. Could a third party’s interests be affected by disclosure?

FOIA is not intended to accommodate otherwise valid requests in which the applicant may make complaints or vent frustrations. The Trust does not have to comply with repeated identical or substantially similar requests from the same applicant unless a “reasonable” interval has elapsed between requests.

Consultation of third parties may be undertaken if their interests could be affected by release of the information requested, and any such consultation may influence the decision. Consultation is not required if an exemption is applied meaning that the information won’t be released.

8. Consultation will be necessary where:

1. disclosure of information may affect the legal rights of a third party, such as the right to have certain information treated in confidence or rights under Article 8 of the European Convention on Human Rights;

2. the views of the third party may assist in determining if information is exempt from disclosure, or
3. the views of the third party may assist in determining the public interest.

9. *Does an exemption apply?*

The presumption of the legislation is that the Trust will disclose information unless the FOIA provides a specific reason to withhold it. There are more than 20 exemptions. They are set out in Appendix 3 and are mainly intended to protect sensitive or confidential information.

Exemptions should be reviewed to see if they apply, where the Trust has real concerns about disclosing the information. Even then, where the potential exemption is a qualified exemption, the public interest test will also be considered in order to see if the public interest in applying the exemption outweighs the public interest in disclosing it. Therefore, unless it is in the public interest to withhold the information, it has to be released. Appendix 4 contains guidance on conducting a public interest test.

10. *What if the request is for personal information?*

Personal information requested by the subject of that information is exempt under the FOIA as such information is covered by the Data Protection Act 2018 and the General Data Protection Regulation. Individuals must, therefore, continue to make a 'subject access request' under the Data Protection Act 2018 and the General Data Protection Regulation if they wish to access such information.

11. *What if the details contain personal information?*

Personal information requested by third parties is also exempt under the FOIA where release of that information would breach the Data Protection Act 2018 and the General Data Protection Regulation data. If a request is made for a document (e.g. Local Committee minutes) which contains personal information whose release to a third party would breach the Data Protection Act 2018 and the General Data Protection Regulation, the document may be issued by blanking out the relevant personal information as set out in the redaction procedure. The procedure for redaction is:

- (i) mask the passages which are not to be disclosed and photocopy;
- (ii) annotate in the margin against each blank passage, the exemption and section of the FOIA under which this passage applies.

12. *What is the cost of providing information?*

The FOIA allows the Trust to charge for providing information, however, the Trust's aim is to respond to FOIA requests free of charge wherever it can. For further information, see Appendix 5.

The first step is to determine if the threshold (currently £450) would be exceeded. Staff costs should be calculated at £25 per hour.

If a request would cost less than the appropriate limit (currently £450), the Trust can only charge for the cost of informing the applicant whether the information is held, and communicating the information to the applicant (e.g. photocopying, printing and postage costs). If a request would cost more than the appropriate limit (£450), the Trust can turn the request down, answer and charge a

fee, or answer and waive the fee. If it decides to charge a fee, and does not have other powers to do so, it can charge on the basis of the costs outlined in Appendix 5.

In practice the Trust will respond to straightforward enquiries free of charge and charge where the costs are significant.

When a charge is going to be made a fees notice will be sent to the enquirer and we do not have to comply with the request until the fee has been paid. Appendix 5 gives more information on charging.

13. Is there a time limit for replying to the enquirer?

Compliance with a request must be prompt and certainly within the legally prescribed limit of 20 working days, excluding school holidays. Failure to comply could result in a complaint to the Information Commissioner. The response time starts from the time the request is received. Where the Trust has asked the enquirer for more information to enable it to answer, the 20 days start time begins when this further information has been received.

If a qualified exemption applies and the Trust needs more time to consider the public interest test, a reply within the 20 days will be sent stating that an exemption applies including an estimate of the date by which a decision on the public interest test will be made.

Where the enquirer has been notified that a charge is to be made, the response time stops until payment is received and then continues again once payment has been received.

14. What action is required to refuse a request?

If it is decided to refuse a request, a refusal notice should be sent, which will contain:

- i) the fact that the responsible person cannot provide the information asked for;
- ii) which exemption(s) apply;
- iii) why the exemption(s) apply to this enquiry (if it is not self-evident);
- iv) reasons for refusal if based on cost of compliance (see Appendix 5)
- v) in the case of non-absolute exemptions, how the public interest test has been applied, specifying the public interest factors taken into account before reaching the decision (see Appendix 4)
- vi) reasons for refusal on vexatious or repeated grounds
- vii) the complaints procedure.

For monitoring purposes the FOI Tracker must be completed with the reasons for refusal.

Appendix 3 Exemptions

Although decisions on disclosure should be made on a presumption of openness, the FOIA recognises the need to preserve confidentiality and protect sensitive material in some circumstances.

Information will not be withheld in response to a valid request UNLESS one of the following applies:-

1. an exemption to disclosure, or
2. the information sought is not held, or
3. the request is considered vexatious or repeated or
4. the cost of compliance exceeds the threshold (see Appendix 5)

The duty to confirm or deny

A person applying for information has the right to be told if the information requested is held and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known as the Trust's "duty to confirm or deny" that it holds the information. However, the Trust does not have to confirm or deny if:-

- a. the exemption is an absolute exemption, or
- b. in the case of qualified exemptions, confirming or denying would itself disclose exempted information

Exemptions

A series of exemptions are set out in the FOIA which allow the withholding of information in relation to an enquiry. Some are very specialised in their application (such as national security) and would not usually be relevant.

There are two general categories of exemptions: -

Absolute: where there is no requirement to confirm or deny that the information is held, disclose the information or consider the public interest; and

Qualified: where, even if an exemption applies, there is a duty to consider the public interest in disclosing information

What are the Absolute Exemptions?

There are 8 absolute exemptions listed in the FOIA. Even where an absolute exemption applies: -

- a. it does not mean that the Trust can't disclose in all cases; it means that disclosure is not required by the FOIA. A decision could be taken to ignore the exemption and release the information taking into account all the facts of the case
- b. there is still a legal obligation to provide reasonable advice and assistance to the enquirer

The absolute exemptions in the Act are set out below.

Information accessible to the enquirer by other means (Section 21) If information is reasonably accessible to the applicant by another route than the FOIA, it is exempt information. This is the case even if the enquirer would have to pay for the information under that alternative route. This exemption includes cases where the Trust is required to give information under other legislation, or where the information is available via the Scheme.

Information dealing with security matters (Section 23) (see also qualified exemption under Section 24 on national security). This applies to information directly or indirectly supplied by, or relating to, bodies dealing with security matters such as GCHQ, MI5, MI6, Special Forces and the National Criminal Intelligence Service.

Court records (Section 32) – (see also the qualified exemption under Section 30 concerning investigations and proceedings conducted by public authorities). This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.

Parliamentary Privilege (Section 34). This exempts information if it is required for the purpose of avoiding an infringement of the Parliamentary privilege. Parliamentary privilege is an immunity whereby MPs cannot be prosecuted for sedition or sued for libel or slander over anything said during proceedings in the House.

Prejudice to the effective conduct of public affairs (Section 36) – see also the qualified exemption part of Section 36. This relates to the maintenance of the collective responsibility of Ministers.

Personal information (Section 40) - see also the qualified exemption part of Section 40. Where enquirers ask to see information about themselves, this is exempt under the FOIA because it is covered by the Data Protection Act 2018 and the General Data Protection Regulation.

Information provided in confidence (Section 41). This relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person.

Prohibitions on disclosure (Section 44) Information is exempt where its disclosure is prohibited under any other legislation by order of a court or where it would constitute a contempt of court or where it is incompatible with any EC obligation.

What are the Qualified Exemptions?

With qualified exemptions, even if it is decided that an exemption applies, there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing information. The qualified exemptions in the FOIA are set out below.

Information intended for future publication (Section 22). If at the time the request was made information is held with a view to publication, then it is exempt from disclosure if it is reasonable that it should not be disclosed until the intended date of publication. This could apply for instance to statistics published at set intervals, for example annually or where information is incomplete and it would be inappropriate to publish prematurely. There is a legal duty to provide

reasonable advice and assistance.

National security (Section 24) (see also absolute exemption 23) Information is exempt for the purposes of safeguarding national security.

Defence (Section 26) Information is exempt if its disclosure would prejudice the defence of the UK.

International relations (Section 27) Information is exempt if its disclosure would or would be likely to, prejudice relations between the UK and any other state, international organisation.

Relations within UK (Section 28) Information is exempt if its disclosure would or would be likely to prejudice relations between any administration in the UK ie the Government, Scottish Administration, Northern Ireland Assembly, or National Assembly of Wales.

The economy (Section 29) Note the following: -

- a. the intended publication does not have to be by the Trust, it can be by another person or body on behalf of the Trust
- b. the date of publication does not have to be known; it could be at some future date (although it is recommended that some idea of a likely date is given)
- c. the duty to confirm or deny does not apply if to do so would involve the disclosure of any of the relevant information

Information is exempt if its disclosure would, or would be likely to, prejudice the economic or financial interests of the UK

Investigations and proceedings conducted by public authorities (Section 30) Information is exempt if it has at any time been held by the school for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.

Law enforcement (Section 31) Information which is not exempt under Section 30 Investigations and Proceedings, may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others: -

- a. the prevention or detection of crime
- b. the apprehension or prosecution of offenders
- c. the administration of justice
- d. the exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, whether circumstances justify regulatory action, ascertaining a person's fitness or competence in relation to their profession, ascertaining the cause of an accident or protecting or recovering charities or its properties
- e. any civil proceedings brought by or on behalf of the Trust which arise out of an investigation carried out for any of the purposes mentioned above.

The duty to confirm or deny does not arise where prejudice would result to any of these matters.

Audit Functions (Section 33) Information is exempt if its disclosure would, or would be likely to, prejudice the exercise of an authority's functions in relation to the audit of the accounts of other public authorities. It does not apply to internal audit reports.

Formulation of government policy (Section 35) Information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (eg Attorney General) and the operation of any Ministerial private office

Prejudice to the conduct of public affairs (Section 36) (excluding matters covered by the absolute exemption part of Section 36) Information likely to prejudice the maintenance of the convention of the collective responsibility of Ministers or likely to inhibit the free and frank provision of advice or exchange of views

Communications with the Queen (Section 37) Information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

Health and Safety (Section 38) Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

Environmental information (Section 39) Information is exempt under the FOIA where it is covered by the Environmental Information Regulations. Environmental information can cover information relating to: air, water, land, natural sites, built environment, flora and fauna, and health. It also covers all information relating to decisions or activities affecting any of these.

Personal information (Section 40) – see also the absolute exemption part of Section 40. Where an individual seeks information about themselves Data Protection Act 2018 and the General Data Protection Regulation powers apply. Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act 2018 and the General Data Protection Regulation, or the data protection principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data Protection Act 2018 and the General Data Protection Regulation. The duty to confirm or deny does not arise in relation to this information if doing so would be incompatible with any of the above.

Legal professional privilege (Section 42) Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally, such information will be privileged. A trust wishing to disclose the information will need to seek consent from the provider of the advice. This exemption covers all such information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.

Commercial interests (Section 43) Information is exempt if it constitutes a trade secret or would be likely to prejudice the commercial interests of any person or body. The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret.

Protective Markings and Applying Exemptions

The presence of a protective marking (Restricted, Confidential or Secret, with or without descriptors such as Staff, Management, Commercial etc) does not constitute an exemption and is not in itself sufficient grounds on which to prevent disclosure. Each case must be considered on its merits.

Timing

Where information has previously been withheld, it must not be assumed that any subsequent requests for the same information will also be refused. Sensitivity of information decreases with age and the impact of any disclosure will be different depending on when the request is received. Therefore, for each request, it will be necessary to consider the harm that could result at the time of the request and, while taking into account any previous exemption applications, each case should be considered separately.

Next steps

In all cases, before writing to the enquirer, the person given responsibility for FOI by the school will need to ensure that the case has been properly considered, and that the reasons for refusal, or public interest test refusal, are sound.

Appendix 4 - Applying the Public Interest Test

Background

Having established that a qualified exemption(s) definitely applies to a particular case, a public interest test will be carried out to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. Therefore, unless it is in the public interest to withhold the information, it has to be released. Although precedent and a developed case law will play a part, individual circumstances will vary and each case will need to be considered on its own merits.

Carrying out the test

What is in the public interest is not necessarily the same as that which may be of interest to the public. It may be irrelevant that a matter may be the subject of public curiosity. In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one. Applying such a test depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in the school and possibly wider. Factors that might be taken into account when weighing the public interest include:-

For Disclosure	Against Disclosure
Is disclosure likely to increase access to information held by the school?	Is disclosure likely to distort public reporting or be misleading because it is incomplete?
Is disclosure likely to give the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions?	Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving?
Is disclosure likely to improve the accountability and transparency of the school in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm or confusion?
Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy?	Is disclosure likely to seriously jeopardise the school's legal or contractual position?
Is disclosure likely to increase public participation in decision-making?	Is disclosure likely to infringe other legislation e.g. Data Protection Act 2018 and the General Data Protection Regulation?
Is disclosure likely to increase public participation in political processes in general?	Is disclosure likely to create a controversial precedent on the release of information or impair our ability to obtain information in the future.

Is disclosure likely to bring to light information affecting public safety?	Is disclosure likely to adversely affect the school's proper functioning and discourage openness in expressing opinions?
Is disclosure likely to reduce further enquiries on the topic?	If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose?

- a. potential or actual embarrassment to, or loss of confidence in, the Trust, school, staff or local committee members is NOT a valid factor
- b. the fact that the information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information
- c. the potential harm of releasing information will reduce over time and should be considered at the time the request is made rather than by reference to when the relevant decision was originally taken
- d. the balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but on certain higher order considerations such as the need to preserve confidentiality of internal discussions
- e. a decision not to release information may be perverse i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party?

Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. Deciding how important each factor is in the circumstances is part of the overall assessment.

For Disclosure

Where the balance of the public interest lies in disclosure, the enquiry should be dealt with and the information required should be made available. Where the factors are equally-balanced, the decision should usually favour disclosure (but see 3rd bullet point above).

Against Disclosure

After carrying out the public interest test if it is decided that the exemption should still apply, proceed to reply to the request. There will be occasions when it has been decided that a qualified exemption applies but consideration of the public interest test may take longer. In such a case, the enquirer should be contacted within 20 working days stating that a particular exemption applies, including an estimate of the date by which a decision on the public interest test will be made. This should be within a "reasonable" time— in practice, it is recommended this decision is made and communicated within the 20 days but where not possible it is suggested that no more than 10 working days beyond the 20 days should be allowed.

APPENDIX 5 - Charging

Important: Different charges apply for requests under the Data Protection Act 2018 and the General Data Protection Regulation.

May we charge a fee?

The FOIA does not require charges to be made but the Trust has discretion to charge applicants a fee in accordance with the Fees Regulations (fees Regulations on the DCA website www.dca.gov.uk/foi/secleg.htm)

What steps will we take in considering whether to charge?

The Trust will take the following into account when calculating the estimated cost of complying with a request for information:

The prescribed costs:

The Trust may, for the purposes of its estimate, take into account only the costs it reasonably expects to incur in relation to the request in –

- a) determining whether it holds the information,
- b) locating the information, or a document which may contain the information,
- c) retrieving the information, or a document which may contain the information, and
- d) extracting the information from a document containing it.

The disbursements

These are any costs directly and reasonably incurred by the Trust in:

- a) informing the applicant whether it holds information of the description specified in the request
- b) communicating the information to the applicant

For all requests, the Trust will have regard to the following two points:

- a. The duty to provide advice and assistance to applicants. If planning to turn down a request for cost reasons, or charge a high fee, we will contact the applicant in advance to discuss whether they would prefer the scope of the request to be modified so that, for example, it would cost less than the appropriate limit.
- b. The maximum amount that can be charged. The Regulations set out the maximum amount that can be charged. However there is nothing to stop the Trust charging a lesser or no fee. Local committees should develop a consistent policy on charging.

May we aggregate the costs where there are multiple requests?

Where two or more requests are made by different people who appear to be acting together or as part of a campaign the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with them all, provided that:

- (a) the two or more requests are for information which is on the same subject matter or is otherwise related;
- (b) the last of the requests is received by the school before the twentieth working day following the date of receipt of the first of the requests; and
- (c) it appears to the school that the requests have been made in an attempt to ensure that the prescribed costs of complying separately with each request would not exceed the appropriate limit.

If the Trust gets multiple requests for the same information, it will be included in the information in the Scheme.

How do we inform the applicant of the fee?

Where there is an intention to charge a fee for complying with a request for information then we will give the person requesting the information notice in writing (the “fees notice”) stating that a fee of the amount specified in the notice is to be charged for complying.

Where a fees notice has been given to the person making the request, the Trust does not need to comply with the request unless the fee is paid within three months of the notice being received.

APPENDIX 6 – Standard Letters

This letter is to be completed by the individual making the request and sent to the DPO

Insert School Name

Date:

Re: subject access request

Dear Mrs Ridgway,

Please provide me with the information about me that I am entitled to under the General Data Protection Regulation. This is so I can be aware of the information you are processing about me, and verify the lawfulness of the processing.

Here is the necessary information:

Name	
Relationship with the school	Please select: Pupil / parent / employee / governor / volunteer Other (please specify):
Correspondence address	
Contact number	
Email address	
Details of the information requested	Please provide me with: <i>Insert details of the information you want that will help us to locate the specific information. Please be as precise as possible, for example:</i> <ul style="list-style-type: none">• Your personnel file

	<ul style="list-style-type: none">• <i>Your child's medical records</i>• <i>Your child's behavior record, held by [insert class teacher]</i>• <i>Emails between 'A' and 'B' between [date]</i>
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If you need any more information from me, please let me know as soon as possible.

Please bear in mind that under the GDPR you cannot charge a fee to provide this information, and in most cases, must supply me with the information within 1 month.

If you need any advice on dealing with this request, you can contact the Information Commissioner's Office on 0303 123 1113 or at www.ico.org.uk

Yours sincerely,

Your Name