Freedom of Information (FOI) Act 2000

A Guide for Schools

Summary

It is the responsibility of the governing body of every school to ensure that the school is able to comply with requests for information under FOI. Schools must also formally adopt and comply with the Information Commissioner’s Model Publication Scheme for schools.

Any request for information may be a request under FOI. Schools have a duty to provide advice and assistance to persons requesting information. All staff will need to be aware of FOI and how the school deals with requests. FOI presumes openness. But it recognises the need to protect sensitive information in certain circumstances and provides for exemptions.

A request for information may only be refused where a specified exemption applies. Even where certain exemptions apply information may still be released if it is in the public interest to do so.

There are prescribed time limits for responding to requests for information. You do not need to create new information just to answer a request.

Fees can only be charged in very limited circumstances. Any fee must be calculated according to FOI regulations and the enquirer notified of the charge.

A good record management system and appropriate induction and training will help schools meet their FOI obligations.

Flow charts showing DPA and FOI provisions governing access to personal information held by schools is included in the manual.

Right to request information

There is a legal right for any person to make a request to a school for access to information held by the school. Schools are under a duty to provide advice and assistance to persons requesting information. Enquirers do not have to say why they want the information and the request does not have to mention FOI. The request must be in writing, which includes fax, email or even Twitter!

The enquirer is entitled to be told whether the school holds the information (this is known as the duty to confirm or deny) and, if so, to have access to it. Access can include providing extracts of a document or a summary of the information sought, or access to original documents.

‘Hold’ means any information relating to the school which the school has created, has received from another body or person, or is held by another body on the school’s behalf.

There are only four reasons for not providing information which has been requested:

• one or more of the exemptions apply (link to section)
• the information is not held
• the cost threshold is reached (£450) (link to section)
• the request is considered vexatious and repeated (link to section)

There is no duty to confirm or deny if to do so would engage one of the exemptions. However in all circumstances, even if you intend to withhold the information you must send a reply to the request (ie you cannot let a request go unanswered).
There are also two important categories of information which should not be dealt with under FOI.

a. personal information - when an enquirer asks to see information the schools holds about them, this is a subject access requests under the Data Protection Act (DPA) 1998.

b. environmental information - Environmental Information Regulations enquiries are ones which relate to air, water, land, 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. (link to section in Manual).

**Time Limits**

You have 20 schools days to reply to a request. The 20 days starts from the first working day after the request is received. See for more information

[FOI Policy: Working days and variations to time for compliance](#)

The clock will be stopped if you ask an enquirer for more information to enable you to answer their request.

**Fees**

Generally you can only charge an enquirer for the material provision of the information ie postage, printing etc. You should have a published charging schedule which sets out reasonable costs ie 10p per photocopy etc.

If the request is going to take more than 18 hours to comply with you can charge for work as described below (however more often it will be easier to refuse the request).

**Cost threshold**

There are special rules if it would take in excess of 18 hours to

- Establish whether information is held
- Locate and retrieve that information, or extract it from a document containing it.

You can either

- Refuse to provide the information under section 12 of the FOI (see template response)
- Charge a fee for providing the information. You can charge for work on the above tasks (at £25 per hour) and for the material cost of providing the information eg printing, postage. You should inform the enquirer of the charge before complying with the request.

In all circumstances you should provide advice and assistance to the enquirer and provide as much information as possible under the cost threshold. If there is a choice about what information can be provided under the cost threshold you should inform the enquirer and ask which information they would prefer to receive.

You can amalgamate the time spent on requests if there are:
• made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
• made for the same or similar information; and
• received by the school within any period of 60 consecutive working days.

Repeated or Vexatious requests

A request can be refused if it is identical, or substantially similar to a previous request submitted by the same individual, is a reasonable period has not elapsed between those requests.


A request can also be refused if it is vexatious. Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious. In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

This will usually be a matter of objectively judging the evidence of the impact on the school and weighing this against any evidence about the purpose and value of the request. For detailed criteria see the link below.

The exemption can only be applied to a request, and not to an enquirer, although clearly it will be appropriate to consider an enquirer’s prior conduct in relation to their communication with the school.


Exemptions

Exemption recognise the need to preserve confidentiality of sensitive information. They allow you to withhold information in some circumstances, and in some cases they even remove the duty to confirm or deny. There are perhaps 15 exemptions in total which are likely to be used by schools, although in practice you are only likely to use a few of them.

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.

Of course even if disclosure is not required by the Act a decision could be taken to ignore the exemption and release the information taking into account all the facts of the case. In all cases there is still a legal obligation to provide reasonable advice and assistance to the enquirer.

Exemptions which schools are likely to use are:
Absolute:

**Personal information** (Section 40)
If requested information contains information relating to another individual it is exempt from disclosure if release of that information would breach the Data Protection Act, for example if disclosure would be unfair to the individual. If a request is made for a document e.g. Board of Governors minutes, which contains personal information whose release would breach the Data Protection Act, the minutes may be issued by blanking out the relevant personal information (known as redacting).

**Information accessible to the enquirer by other means** (Section 21)
If information is reasonably accessible to the enquirer by another route, other than through the Act, for example it is already published on the web or it is available under other legislation, it is exempt information. This is the case even if the enquirer would have to pay for the information under that alternative route. You should however tell the enquirer where and how they can get the information.

**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.

Qualified:

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

**Information intended for future publication** (Section 22)
If when the request was made, information is held with a view to publication, by the school or by another person or body, 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, or a report which will be published once staff have been informed of the contents, and it would be inappropriate to publish prematurely.

**Law enforcement** (Section 31)
Information is exempt under this exemption if disclosure would, or would be likely to prejudice law enforcement functions, chiefly the prevention or detection of crime or apprehension or prosecution of offenders. The duty to confirm or deny does not arise where this alone would prejudice would result to such law enforcement.

**Prejudice to the conduct of public affairs** (Section 31)
Information is exempt under the exemption if in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to inhibit
b) i) the free and frank provision of advice, or
   ii) the free and frank exchange of views for the purposes of deliberation, or
   c) would otherwise prejudice, or be likely otherwise to prejudice, the effective conduct of public affairs.

This exemption has a high threshold. In the case of a school the ‘qualified person’ will usually be the headteacher. Records should be kept of the information provided to the qualified person for their consideration and their deliberations and decision.
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 if even this would cause prejudice.

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 (including the school). 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. This exemption has a high threshold, for example you might release a winning tender but not the price breakdown.

Note there is no exemption for embarrassment!

Appeals
If an enquirer is unhappy with your decision or the way you have handled their request, they have the right of appeal, first to the school and ultimately to the Information Commissioner. You must tell them this when you withhold any information. The schools complaints procedure should be used to handle any written expression of dissatisfaction, even if it does not specifically ask for a review. Wherever practicable the review should be handled by someone not involved in the original decision.

- When the outcome is that information should be disclosed this should be done as soon as practicable and the enquirer informed of when.
- When the outcome is that procedures within the school have not been properly followed, the school should apologise to the enquirer and review procedures to prevent any reoccurrence.
- When the outcome upholds the school’s original decision or action, you should inform the enquirer of the right to appeal to the Information Commissioner and the details of how to do so.

NB if the request was refused on the grounds that it was vexatious or repeated you should still review the original decision but it would be advisable to tell the enquirer that following the review you will no longer reply to communications on the topic.

Records
You will need to keep records of all the enquiries received, how they were dealt with, your decisions and reasons for them; and of any complaints or appeals.

Responsibility
School governing bodies are responsible for ensuring a school complies with FOI. They may wish to delegate to the Head Teacher or other appropriate individual day-to-day responsibility for FOI policy and the provision of advice, guidance, publicity and interpretation of the Act. That person might usefully be one and the same as, or have good organisational links with, the person responsible for data protection and records management matters.

Before responding to all FOIs, the person given responsibility for FOI by the school governing body will need to ensure that the case has been properly considered, and that the reasons for refusal, or public interest test refusal, are sound.

Wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is a criminal offence.
Training

Staff and governors need to be aware of their responsibilities under FOI. Schools should periodically wish to review their induction and training programmes to ensure that these deliver adequate FOI awareness and familiarity with the school’s FOI policy and procedures.

Veritau can provide tailored in house training to individual schools or school cluster groups on request. Please contact X for more information.

Applying the Public Interest Test

When a qualified exemption(s) applies to a particular case, you must then carry out a public interest test to identify whether the public interest in applying the exemption outweighs the public interest in disclosing the information. In other words, unless it is in the public interest to withhold the information, it has to be released. Each case must be considered on its own merits.

For exceptionally complex cases it may not be possible to complete the public interest test within the 20 schools days. There is the provision to extend the deadline by up to a further 20 school days but this should only be done in the rarest of occasions and you should keep the enquirer updated, providing them with a revised due date.

Carrying out the test

It is worth noting that what is in the public interest is not necessarily the same as that which may be of interest to the public or to a particular enquirer. It may be irrelevant that a matter may be the subject of public curiosity. 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.