



SIR THOMAS RICH'S

Freedom of Information Policy

This policy has been drawn up in accordance with the (FOIA) Freedom of Information Act 2010, ICO Public Contract Regulations, and Gloucestershire Freedom of Information Policy guidance.

Date Reviewed: 1 September 2017

Status: Statutory

Responsibility: It is the responsibility of the Governors to ensure procedures are in place in accordance with the FOIA and to review the policy regularly. Responsibility for responding to requests lies with the Headmaster.

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1. Introduction

From 1 January 2011 **the Freedom of Information Act 2000 (FOIA)** applied to all Academies. Under the FOIA the School is required to proactively publicise recorded information and release it to the public when requested. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings. The Act only covers the information held by the School. It does not require the School to create new information or record information it does not need. It also excludes information held solely on behalf of another person, body or person.

The School's **Publication Scheme** details the information available and the charges.

The Act does not give people access to their own personal data. A request for personal data should be made under the **Data Protection Act 1998 (DPA)**. See the School's **Data Protection Policy**.

Requests for environmental information should be made via the **Environmental Information Regulations 2004 (EIR)**. For full details see: http://ico.org.uk/for_organisations/environmental_information/guide

2. Principles behind the Freedom of Information Act

- Everyone has a right to access official information. Disclosure should be the default.
- An applicant does not need to give a reason for wanting the information.
- All requests should be treated equally.
- Information released under the FOIA should be regarded as being released to the world at large.

3. Copyright and intellectual property

The FOIA does not affect copyright and intellectual property rights that give owners the right to protect their original work from exploitation.

When the School gives access to information under the Act, it cannot place any conditions or restrictions. The School may, however, include a copyright notice with the information and make a claim in the courts if the information is used in breach of copyright.

The Act does not give the right for information to be re-used, although there are specific provisions for reuse if the information is a dataset (set of information). If an applicant requests information that is or forms part of a dataset, and expresses a preference to receive it in electronic form, the School will release the dataset in a way that enables it to be used and re-used and grant a licence. See Secretary of State's Code of Practice (datasets) on the discharge of public authority's functions under Part 1 of the FOIA.

<http://www.justice.gov.uk/downloads/information-access-rights/foi/code-of-practice-datasets.pdf>

A request for a dataset will be treated as for any other information.

4. Requesting information

Anyone has a right to request information and the School has a duty to tell the applicant whether it holds the information and to provide that information. The School will respond to the request within 20 school days. It will also provide advice and assistance to the applicant on making a valid request under the FOIA.

The request must:

- be in writing. This could be a letter or email.
- include the applicant's real name
- include an address for correspondence. This could be an email address.
- describe the information requested

Unless there is good reason not to do so, the School will release the information it holds. If the information is out of date, incomplete or inaccurate, it will advise the requester accordingly.

If the School does not hold the information requested, then the School will inform the applicant of this in writing. In some cases the School can refuse to confirm or deny whether it holds any information. This is called a "neither confirm nor deny response" (NCND). This would be applied where either confirming or denying the holding of information could be harmful. The School will issue a refusal notice explaining this to the requester.

5. Withholding information

The School will refuse a request if:

- **It would cost too much or take too much staff time to deal with the request.**
The School will not charge for information, other than the costs incurred for photocopying, printing and postage. It does not charge for staff time. However, if the School estimates that the cost of compliance would exceed £450, it can refuse the request. (Staff time, charged at £25 per hour, can form part of the calculation.) The School will send the applicant a written refusal notice and state that compliance would exceed the appropriate cost limit. The School may offer to do the work and charge for the costs above the £450 ceiling.
- **The request is vexatious.**
A refusal on the grounds of a vexatious request will only be taken when it is felt that the request is likely to cause disproportionate or unjustifiable level of distress, disruption or irritation. In this case the School does not need to confirm or deny whether it has the information.
- **The request repeats a previous request from the same person.**
The School may refuse a request if it is identical or substantially similar to a previous request from the same applicant. If a reasonable period has lapsed, however, the School will provide the information. The reasonable period is not set down in law but will depend on the circumstances and how often the information changes.
- **An exemption applies.**

6. Exemptions

These exist to protect information that should not be disclosed because disclosure would be harmful to another person or against the public interest.

The School will automatically withhold information where an “absolute” exemption exists. Most exemptions are “qualified”. This means that before reaching a decision the School must consider the public interest arguments. The School will consider whether the public interest in withholding the information outweighs that of disclosure. The School has extra time to consider the public interest argument. It will, however, write to the applicant within the standard time for compliance to inform him/her that the School is claiming a time extension.

Some exemptions are prejudiced based. When considering these exemptions:

- The School must be able to identify a negative consequence of the disclosure and this must be significant.
- The School must be able to show a link between the disclosure and the negative consequences.
- There must be a real possibility of the negative consequences happening.

The exemptions can be found in Part 2 of the Act, sections 21 – 44. A summary is provided in Appendix 1.

When the School makes a decision to refuse a request on the basis of an exemption, it will issue a written refusal within 20 school days, specifying which exemption(s) it is relying on and, where the public interest test is required in an exemption, the reasons why the refusal to disclose information outweighs the public interest argument.

The School will also advise the requester that he/she can complain about the decision to the School and that he/she also has the right to complain to the ICO. The School will provide the contact details in the refusal notice.

In some cases the School may be able to release some of the information requested, having removed certain sensitive details (redaction). It will take care to ensure the requester cannot reverse the redaction and that it does not contain hidden source data. The School will provide an indication of how much text has been redacted and ensure any information needed for the understanding of the information provided, is given. Both redacted and unredacted versions will be kept by the School.

7. Information held within contracts with the School

The Public Contract Regulations 2006 stipulates (regulation 43) that information **forwarded** to a public authority by a contractor will be protected from disclosure only if it is **reasonably** designated as **confidential** under English law. This does not extend to information negotiated or mutually agreed as part of a contract.

The School may withhold information using the reason of **confidentiality** if:

- The information was imparted in circumstances giving rise to an expectation of confidence.
- The information has the necessary quality of confidence.
- An unauthorised disclosure would be detrimental to the contractor.
- There is no overriding public interest defence against the breach of confidence.

The School can also look at exemptions under the FOIA (see Appendix 1; sections 41, 43, 44) to refuse a request for information. These have a wider scope as they do not just apply to information **forwarded** by the contractor.

For further information see:

http://ico.org.uk/news/blog/2013/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/public-contract-regulations-foi-eir.ashx

Confidentiality of commercial information about the environment is protected through the EIR.

8. Complaints procedure

Whenever the School withholds information, it will inform the applicant of his/her right to complain to the School about the decision. Any complaint should first be made to the Freedom of Information Officer, currently Mr D. Dempsey, who will endeavour to resolve the matter informally. Should the requester wish to pursue the matter, he/she may make a formal complaint in writing to the Headmaster. The Headmaster, or his Deputy in his absence, will respond within 5 days. If the requester is still dissatisfied, the School will advise of their right of appeal to the ICO, the Information Commissioner's Office. <https://ico.org.uk>. Helpline: 0303 1231113 or 01625 545745. The ICO has the power to issue legally binding decision notices. If the ICO overturns the School's decision to withhold information, this information will be supplied within 35 calendar days of the date of the notice. However, both the School and the requester have the right to appeal to the First Tier Tribunal within 28 days. The Tribunal can overturn the Commissioner's decision if it was wrong in law or if the Commissioner exercised his discretion wrongly. It will then issue a substitute decision notice.

Appeals may be by oral hearing where witnesses give evidence in person, or if the evidence is presented entirely in writing, the appeal will be decided on the basis of those documents.

9. Illegal actions

It is a criminal offence to alter, deface or remove any record (including e-mails) following receipt of an information request

Appendix 1

Summary of Exemptions

Section 21: **Information already reasonably accessible.** When applying this exemption the authority has a duty to confirm or deny whether it holds the information. This exemption is absolute.

Section 22: **Information intended for future publication.** This exemption is qualified by the public interest test.

Section 23 and 24: **Information received from or relating to Security Bodies and National Security.** These exemptions are absolute.

Sections 26-29: These exemptions apply if complying with the request would **prejudice defence; the effectiveness of the armed forces; international relations; relations between the UK government, the Scottish Executive, the Welsh Assembly and the Northern Ireland Executive; the economy; the financial interests of the UK, Welsh or Northern Ireland administrations.** They are qualified by the public interest test.

Section 30: **Investigations.** This refers to information held for the purposes of criminal investigations. It is qualified by the public interest test.

Section 31: **Prejudice to law enforcement.** This can be applied where disclosure of information held would prejudice various law enforcement purposes. It is qualified by the public interest test.

Section 32: **Court records.** This exemption is absolute and does not need a confirm or deny response.

Section 33: **Prejudice to audit functions.** This can only be used by bodies with audit functions and can be applied where compliance would prejudice those functions. This exemption is qualified by the public interest test.

Section 34: **Parliamentary Privilege.** This exemption is absolute.

Section 35: **Government Policy.** This can only be claimed by Government departments and is qualified by the public interest test.

Section 36: **Prejudice to the effective conduct of public affairs.** This exemption is broad and can be applied to a range of situations. This differs from other exemptions in that the judgement about prejudice must be made by the legally qualified person for that public authority. A list of qualified people is given in the Act. In most cases this is a qualified exemption.

Section 37: **Communications with the Royal Family and the granting of honours.** This exemption is absolute.

Section 38: **Endangering health and safety.** In deciding whether this exemption can be applied, the authority must use the same test as the prejudice test. This exemption is qualified by the public interest test.

Section 39: **Environmental Information.** Requests for environmental information must be dealt with under the Environmental Information Regulations 2004. This exemption confirms that it is not necessary to respond to it under the FOIA.

Section 40 (1) **Personal Information of the requester.** This exemption confirms that this should be dealt with under the Data Protection Act, DPA. If information contains some of the applicant's personal data and other non-personal information, then the authority will need to consider releasing some of the information under FOIA and some under DPA. The exemption is absolute.

Section 40 (2) **Data Protection.** This exemption covers the personal data of third parties where complying with the request would breach any of the principles in the DPA. This exemption is absolute.

Section 41: **Confidentiality.** This exemption can be applied if the authority received the information from someone else and compliance would be a breach of confidence that is actionable. It cannot be applied to information generated within the authority, although it can be applied to information received from someone else and included in the authority's records. The exemption is absolute.

Section 42: **Legal Professional Privilege.** This exemption is qualified.

Section 43: **Trade Secrets and Prejudice to commercial interests.** This exemption is qualified.

Section 44: **Prohibitions on disclosure.** This can be applied where complying with the request is not allowed under law, would be contrary to an obligation under law or would constitute contempt of court. The exemption is absolute.