

**Bridge Academy Trust**

**FREEDOM OF INFORMATION**

February 2019

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Consultation with Staff Required	No	
Period of Consultation (if required)	From	To
Trustees Committee Reviewing Document:	Policy Review Committee	
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Date of Adoption of Policy	April 2019	
Date Policy available on Central Area/www (if appropriate)	April 2019	

## CHANGES FEBRUARY 2019 –

### REMOVAL

- 2.3 The Information & Records Management Society has produced a records management guide for schools on how long they should keep school records.

Replaced with -

Refer to Records Management Policy for guidance on how long to keep school records.

- **Appendix 2** , Replace Data Protection Policy with GDPR + Record Management Policy

Acts, ICO model publication scheme (Appendix 1) + telephone numbers checked for latest version.

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## **INTRODUCTION**

- 1.1. The Trust is committed to the FOIA and to the principles of accountability and the general right of access to information, subject to legal exemptions. This policy outlines the school's response to the Act and a framework for managing requests.
- 1.2. The Trustees are responsible for ensuring that each school complies with the Freedom of Information Act 2000 (FOIA). Some aspects, such as charging, are at the discretion of the Trust.

## **BACKGROUND**

- 2.1. The FOIA came into force fully on 1st January 2005. Under the Act, any person has a legal right to ask for access to information held by the school. They are entitled to be told whether the school holds the information and to receive a copy, subject to certain exceptions.
- 2.2. The information which the school routinely makes available to the public is included in the Publication Scheme (Appendix 1). Requests for other information should be dealt with in accordance with the statutory guidance. While the Act assumes openness, it recognises that certain information is sensitive and there are exceptions to protect this information.
- 2.3. The Act is fully retrospective and any past records that the school holds are covered by the Act. It is an offence to wilfully conceal, damage or destroy information in order to avoid responding to an enquiry, so it is important that no records that are the subject of an enquiry are amended or destroyed. Refer to Records Management Policy for guidance on how long to keep school records.

## **OBLIGATIONS AND DUTIES**

- 3.1. Each school in the Trust recognises its duty to provide advice and assistance to anyone requesting information. The school will respond to straightforward verbal requests for information and will help enquirers to put more complex verbal requests into writing so that they can be handled under the Act.
- 3.2. Each school in the Trust recognises its duty to tell enquirers whether or not it holds the information being requested (the duty to confirm or deny) and to provide access to the information held in accordance with the procedures laid down in Appendix 2.

## **PUBLICATION SCHEME**

- 4.1. The Trust has adopted the Model Publication Scheme approved by the Information Commissions (see Appendix 1).

## **DEALING WITH REQUESTS**

- 5.1. Requests for FOI can be addressed to anyone in the school so all staff need to be aware of the process for dealing with requests. Requests must be made in writing (including e-mail), should include the enquirers name and correspondence address, and should state what information they require. They do not have to mention the Act, nor do they have to say why they want the information.

- 5.2. The school has 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. There is no need to collect data in specific response to an FOI enquiry.
- 5.3. The school will respond to all requests within 20 days, excluding school holidays, according to the procedures in Appendix 2.

## **EXEMPTIONS**

- 6.1. Certain information is subject to either absolute or qualified exemptions. The exemptions are listed in Appendix 3.
- 6.2. When the school wishes to apply a qualified exemption to a request it will invoke the public interest test procedures (see Appendix 4) to determine if public interest in applying the exemption outweighs the public interest in disclosing the information.
- 6.3. The school will maintain a register of requests where it has refused to supply information, giving the reasons for the refusal. The register will be retained for 5 years.

## **PUBLIC INTEREST TEST**

- 7.1. Unless it is in the public interest to withhold information, it has to be released. The school will apply the Public Interest Test before any qualified exemptions are applied.
- 7.2. For information on applying the Public Interest Test see Appendix 4.

## **CHARGING**

- 8.1. FOI does not require charges to be made, but schools have discretion to charge applicants a fee in accordance with the FOI and DPA (Appropriate Limit and Fees) Regulations 2004. The school reserves the right to refuse to supply information where the cost of doing so exceeds the statutory maximum (currently £450).
- 8.2. In estimating whether complying with a request would exceed the appropriate limit, the school can only take into account the costs it reasonably expects to incur in
  - determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
- 8.3. Each school will take into account the costs attributable to the time that persons (both the school's staff and external contractors) are expected to spend on these activities. Such costs will be calculated at £25 per hour per person.
- 8.4. The Information Commissioner can investigate the way in which an estimate has been arrived at and, if it is considered unreasonable, substitute his own reasonable estimate.
- 8.5. If the information is exempt, fees will not apply and costs involved with considering whether information is exempt under the Act cannot be taken into account.
- 8.6. If the request would cost less than the limit, the school can only charge for the cost of informing the application where the information is held and communicating the information to the applicant (e.g. photocopying, printing and postage costs).

- 8.7. If the request would cost more than the limit the school can turn the request down, answer and charge a fee, or answer and waive the fee. If the school chooses to charge for the request it will add the costs of informing the applicant whether the information is held and communicating the information to them to the calculated fee.
- 8.8. For all requests, the school should have regard to its duty to provide advice and assistance to applicants. If planning to turn down a request for cost reasons, or charge a high fee, the school will contact the applicant in advance to discuss whether he/she would prefer the scope of the request to be modified.
- 8.9. Where two or more requests are made to the school 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 will be taken to be the estimated cost of complying with them all, provided that:
- the two or more requests referred to are for information which is on the same subject matter or is otherwise related;
  - the last of the requests if received by the school before the 20th working day following the date of receipt of the first of the requests; and
  - 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 threshold.
- 8.10. Where the school intends to charge a fee for complying with a request for information it 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 school will not need to comply with the request unless the fee is paid within three months of the notice being received.

## **RESPONSIBILITIES**

- 9.1. The Trust will delegate the day-to-day responsibility for compliance with the FOIA to the Headteacher/ Head of School, who may nominate a member of staff to coordinate enquiries and be a point of reference for advice and training.

## **COMPLAINTS**

- 10.1. Any comments or complaints will be dealt with through the school's complaints procedure. The school will maintain records of all complaints and their outcome.
- 10.2. If, on investigation, the school's original decision is upheld, the complainant will be informed of their right of appeal to the Information Commissioner's office (Helpline Number: 0303 123 1113)

# APPENDIX 1 – ICO MODEL PUBLICATION SCHEME



## Model publication scheme Freedom of Information Act

This model publication scheme has been prepared and approved by the Information Commissioner. It may be adopted without modification by any public authority without further approval and will be valid until further notice.

This publication scheme commits an authority to make information available to the public as part of its normal business activities. The information covered is included in the classes of information mentioned below, where this information is held by the authority. Additional assistance is provided to the definition of these classes in sector specific guidance manuals issued by the Information Commissioner.

The scheme commits an authority:

- To proactively publish or otherwise make available as a matter of routine, information, including environmental information, which is held by the authority and falls within the classifications below.
- To specify the information which is held by the authority and falls within the classifications below.
- To proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within this scheme.
- To 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.
- To review and update on a regular basis the information the authority makes available under this scheme.
- To produce a schedule of any fees charged for access to information which is made proactively available.
- To make this publication scheme available to the public.
- To publish any dataset held by the authority that has been requested, and any updated versions it holds, unless the authority is satisfied that it is not appropriate to do so; to publish the dataset, where reasonably practicable, in an electronic form that is capable of re-use; and, if any information in the dataset is a relevant copyright work and the public authority is the only owner, to make the information available for re-use under a specified licence. The term 'dataset' is defined in section 11(5) of the Freedom of Information Act. The terms 'relevant copyright work' and 'specified licence' are defined in section 19(8) of that Act.

## **CLASSES OF INFORMATION**

### **Who we are and what we do**

Organisational information, locations and contacts, constitutional and legal governance.

### **What we spend and how we spend it**

Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.

### **What our priorities are and how we are doing**

Strategy and performance information, plans, assessments, inspections and reviews.

### **How we make decisions**

Policy proposals and decisions. Decision-making processes, internal criteria and procedures, consultations.

### **Our policies and procedures**

Current written protocols for delivering our functions and responsibilities.

### **Lists and registers**

Information held in registers required by law and other lists and registers relating to the functions of the authority.

### **The services we offer**

Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.

## **THE METHOD BY WHICH INFORMATION PUBLISHED UNDER THIS SCHEME WILL BE MADE AVAILABLE**

The authority will indicate clearly to the public what information is covered by this scheme and how it can be obtained.

Where it is within the capability of a public authority, information will be provided on a website. Where it is impracticable to make information available on a website or when an individual does not wish to access the information by the website, a public authority will indicate how information can be obtained by other means and provide it by those means.

In exceptional circumstances some information may be available only by viewing in person. Where this manner is specified, contact details will be provided. An appointment to view the information will be arranged within a reasonable timescale.

Information will be provided in the language in which it is held or in such other language that is legally required. Where an authority is legally required to translate any information, it will do so.

Obligations under disability and discrimination legislation and any other legislation to provide information in other forms and formats will be adhered to when providing information in accordance with this scheme.

## **CHARGES WHICH MAY BE MADE FOR INFORMATION PUBLISHED UNDER THIS SCHEME**

The purpose of this scheme is to make the maximum amount of information readily available at minimum inconvenience and cost to the public. Charges made by the authority for routinely published material will be justified and transparent and kept to a minimum.

Material which is published and accessed on a website will be provided free of charge.

Charges may be made for information subject to a charging regime specified by Parliament.

Charges may be made for actual disbursements incurred such as:

- photocopying
- postage and packaging
- the costs directly incurred as a result of viewing information

Charges may also be made for information provided under this scheme where they are legally authorised, they are in all the circumstances, including the general principles of the right of access to information held by public authorities, justified and are in accordance with a published schedule or schedules of fees which is readily available to the public.

Charges may also be made for making datasets (or parts of datasets) that are relevant copyright works available for re-use. These charges will be in accordance with either regulations made under section 11B of the Freedom of Information Act or other enactments.

If a charge is to be made, confirmation of the payment due will be given before the information is provided. Payment may be requested prior to provision of the information.

## **WRITTEN REQUESTS**

Information held by a public authority that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act.

# APPENDIX 2 – PROCEDURE FOR DEALING WITH REQUESTS

To handle a request for information the Trustees or delegated person will need to ask themselves a series of questions (see Process Maps 1 and 2).

## Is it a FOI request for information?

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

- Data Protection enquiries (or subject access requests) are where the enquirer asks to see what personal information the school holds about the enquirers. If the enquiry is a Data Protection request, follow the guidance in the school's Data Protection policy.
- Environmental Information Regulations enquiries 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 include enquiries about recycling, phone masts, school playing fields, car parking, etc. If the enquiry is about environmental information the school will follow the guidance provided by the Information Commissioner's Office.
- 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.

## Is this a valid FOI request for information?

An FOI request should:

- be in writing, including e-mail or FAX;
- not be covered by any one of the other pieces of legislation.
- state the enquirer's name and correspondence address (e-mail addresses are allowed);
- describe the information requested – there must be sufficient information to be able to identify and locate the information. (In cases where the enquiry is ambiguous, notify the enquirer that you need further information to enable you to answer – your aim is to clarify the nature of the information requested and not to determine the aims or motivation of the enquirer. You do not have to deal with the request until the further information is received and the response time limit starts from the date this is received.)

Verbal enquiries are not covered by the FOIA. For enquires that are more complex, and to avoid disputes over what was asked for, you should ask the enquirer to put the request in writing or e-mail and the request will then become subject to FOI.

## Does the school hold the information?

"Holding" information means information relating to the business of the school and is information: the school has created, or the school has received from another body or person, or held by another body on the school's behalf.

## Information means both hard copy and digital information, including e-mail.

If the school does not hold the information, you do not have to create or acquire it just to answer the enquiry, although a reasonable search should be made before denying that you have information the school might be expected to hold.

### **Has the information requested already been made public?**

If the information requested is already in the public domain, for instance through the school's Publication Scheme or on the website, direct the enquirer to the information and explain how to access it.

### **Is the request vexatious or manifestly unreasonable or repeated?**

The Act states that there is no obligation to comply with vexatious requests – i.e. a request that is designed to cause inconvenience, harassment or expense rather than to obtain information and would which would require a substantial diversion of resources or would otherwise undermine the work of the school. In addition, the school does not have to comply with repeated identical or substantially similar requests from the same applicant unless a 'reasonable' interval has elapsed between requests.

### **Can the school transfer a request to another body?**

If the information is held by another public authority, such as the local authority, check with them that they hold it and then transfer the request to them. You must notify the enquirer that you do not hold the information and to whom you have transferred the request. You should answer any parts of the enquiry in respect of information the school does hold.

### **Could a third party's interests be affected by disclosure?**

Consultation of third parties may be required if their interests could be affected by release of the information requested and any such consultation may influence the decision. You do not need to consult where you are not going to disclose the information because you will be applying an exemption.

Consultation will be necessary where:

- 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;
- the views of the third party may assist you to determine if information is exempt from disclosure; or
- the views of the third party may assist you to determine the public interest.

### **Does an exemption apply?**

The presumption of the legislation is that you will disclose information unless the Act provides a specific reason to withhold it. There are more than 20 exemptions (see Appendix 3) and they are mainly intended to protect sensitive or confidential information.

Only where you have real concerns about disclosing the information should you look to see whether an exemption might apply. Even then, where the potential exemption is a qualified exemption, you need to consider the public interest test to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. Unless it is in the public interest to withhold the information, it has to be released. (See Appendix 4 for guidance on conducting a public interest test.)

### **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. Individuals must, therefore, continue to make a 'subject access request' under the Data Protection Act if they wish to access such information.

## **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. If a request is made for a document (e.g. Trustees minutes) that contains personal information and release to a third party would breach the Data Protection Act, the document may be issued by blanking out the relevant personal information as set out in the redaction procedure.

### Redaction Procedure

- *Mask the passages which are not to be disclosed and photocopy.*
- *Annotate in the margin against each blank passage the exemption and section of the Act under which this passage is exempt.*
- *Explain in the covering letter that the relevant exemptions are marked in the attachments and, in the case of non-absolute exemptions, how the public interest test has been considered.*
- *On no account use the computer to rewrite the document or e-mail and delete the exempted passages so that the resulting document appears as though they did not exist. The one circumstance where this would be permissible would be where the only redacted parts are personal information, such as people's names, and the covering letter should explain this.*

## **How much can we charge?**

The Act allows Trusts to charge for providing information.

The first step is to determine if the threshold (current £450) would be exceeded. Staff costs should be calculated at £25 per hour. You can take account of the costs of determining if the information is held, locating and retrieving the information, and extracting the information from other documents. You cannot take into account the costs involved in determining whether information is exempt.

If a request would cost less than the threshold, the school 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 threshold, the school can turn the request down, answer and charge a fee, or answer and waive the fee.

The school should consider whether calculating the cost of the fee would outweigh the cost of providing the information. In practice, it is recommended that the school should respond to straightforward enquiries free of charge and only charge where the costs are significant.

If the school decides to charge, a fees notice must be sent to the enquirer and the school does not have to comply with the request until the fee has been paid.

## **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 you have asked the enquirer for more information to enable you to answer, the 20 days start time begins when this further information has been received.

If a qualified exemption applies and you need more time to consider the public interest test, you should reply within the 20 days stating that an exemption applies, but include an estimate of the date by which a decision on the public interest test will be made. This should be within a 'reasonable' time and, in practice, it is recommended that normally this should be within 10 working days.

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

## **What action is required to refuse a request?**

If the information is not to be provided, the person dealing with the request must immediately contact the person in school with delegated responsibility for FOI to ensure that the case has been properly considered and the reasons for refusal are sound. If it is decided to refuse a request, you need to send a refusals notice, which must contain

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

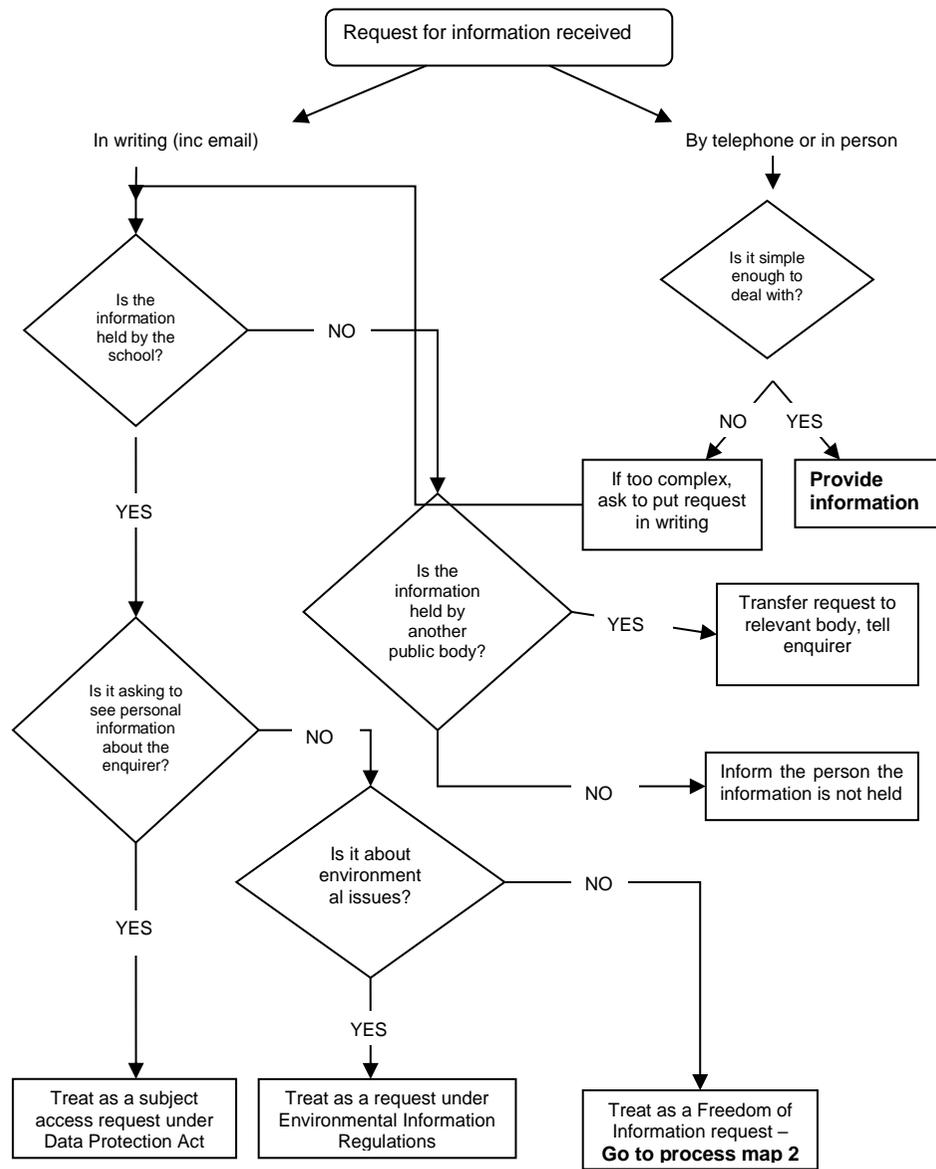
For monitoring purposes and in case of an appeal against a decision not to release the information or an investigation by the Information Commissioner, the responsible person must keep a record of all enquiries where all or part of the requested information is withheld and exemptions are claimed. The record must include the reasons for the decision to withhold the information. Records should be retained for 5 years. There are no requirements to keep records where you have supplied the information requested.

## **What do I do if someone complains?**

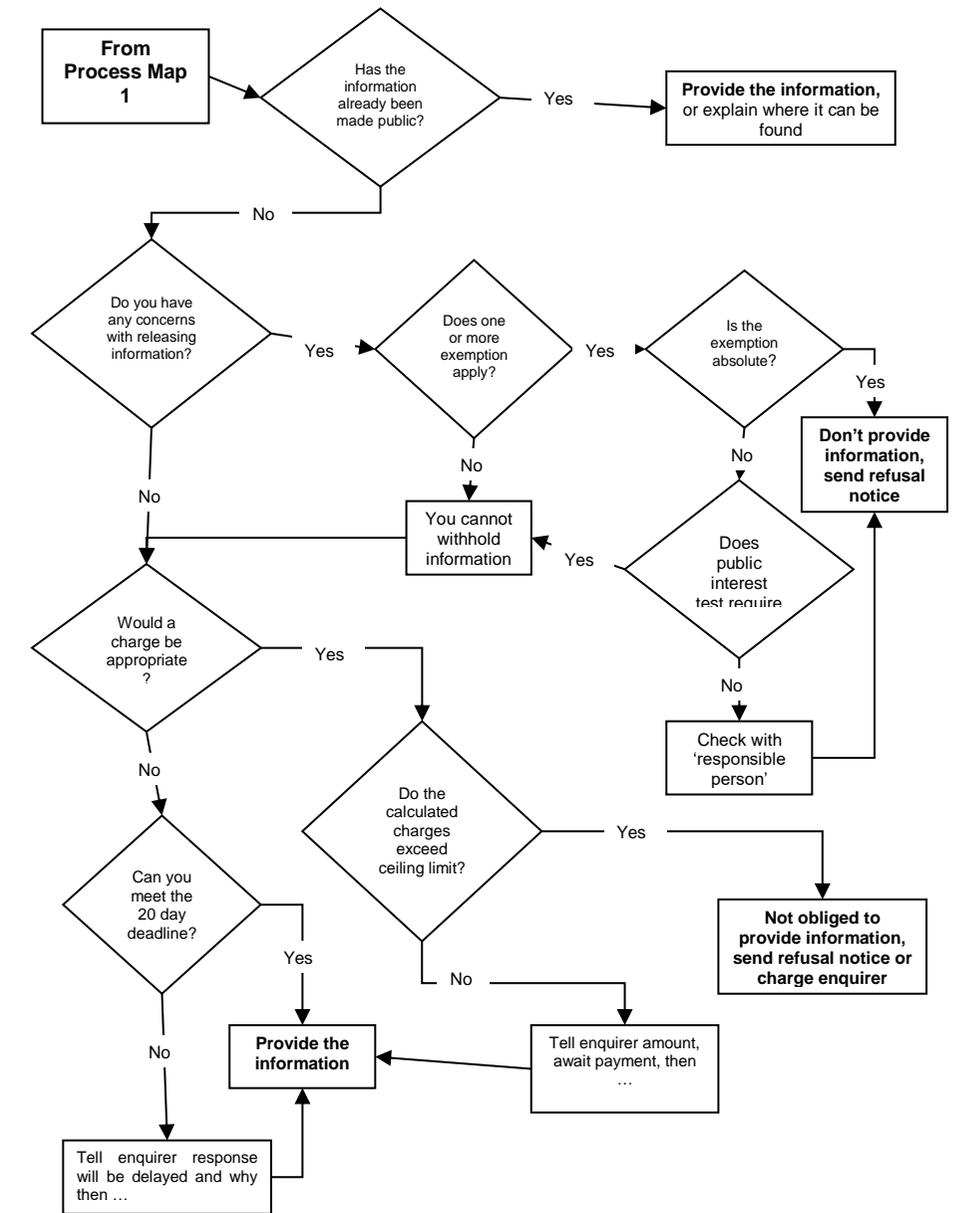
Any written (including e-mail) expression of dissatisfaction – even if it does not specifically seek a review – should be handled through the school's existing complaints procedure, which should be fair and impartial. Wherever practicable, the review should be handled by someone not involved in the original decision. The Trust should set and publish a target time for determining complaints and information on the success rate in meeting the target. The school should maintain records of all complaints and their outcomes.

When the original request has been reviewed and the outcome is that the information should be disclosed, this should be done as soon as practicable. When the outcome is that procedures within the school have not been properly followed, the school should review procedures to prevent any recurrence. When the outcome upholds the school's original decision or action, the applicant should be informed of their right of appeal to the Information Commissioner.

# PROCESS MAP 1



# PROCESS MAP 2



## APPENDIX 3 - EXEMPTIONS

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

A series of exemptions are set out in the Act which allow the withholding of information in relation to an enquiry. There are more than 20 exemptions, but schools are likely to use only a few of them.

### ABSOLUTE EXEMPTIONS

No requirement to confirm or deny that the information is held, disclose the information or consider the public interest.

Where an absolute exemption applies it means that the 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. There is still a legal obligation to provide reasonable advice and assistance to the enquirer.

There are 8 absolute exemptions listed in the Act.

- **Information accessible to the enquirer by other means**

*If information is reasonably accessible to the applicant by another route than the Act, 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 school is required to give information under other legislation, or where the information is available via the Publication Scheme.*

- **Information dealing with security matters**

*Information directly or indirectly supplied by, or relating to, bodies dealing with security matters.*

- **Court records**

*Information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.*

- **Parliamentary Privilege**

*Information required for the purpose of avoiding an infringement of the Parliamentary privilege.*

- **Prejudice to the effective conduct of public affairs**

*Relates to the maintenance of the collective responsibility of Ministers.*

- **Personal information**

*Where enquirers ask to see information about themselves this is exempt under the Act as it is covered by the Data Protection Act.*

- **Information provided in confidence**

*Relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person.*

- **Prohibitions of disclosure**

*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.*

### QUALIFIED EXEMPTIONS

Even if an exemption applies there is a duty to consider the public interest in confirming or denying that the information exists or in disclosing information. The qualified exemptions in the Act are:

- **Information intended for future publication**

*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 would apply, for example, to statistics published at set intervals or where information is incomplete and it would be inappropriate to publish prematurely. The intended publication does not have to be by the school, it can be another body on behalf of the school. The date of publication does not have to be known, although it is recommended that some idea of a likely date is given. The duty to confirm or deny does not apply if to do so would involve the disclosure of any of the relevant information.*

- **National security**

*Information is exempt for the purposes of safeguarding national security.*

- **Defence**

*Information is exempt if its disclosure would prejudice the defence of the UK.*

- **International relations**

*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**

*Information is exempt if its disclosure would, or would be likely to, prejudice relations between any administration in the UK.*

- **The economy**

*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**

*Information is exempt if it has at any time been held by the school for the purposes of criminal investigations or proceedings, 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**

*Information may be exempt in the event that disclosure would, or would be likely to, prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; the administration of justice; 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; any civil proceedings brought by, or on behalf of, the school which arise out of an investigation carried out for any of the purposes mentioned above. The duty to confirm or deny does not apply to such information.*

- **Audit functions**

*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**

*Information held is exempt if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers and the operation of any Ministerial private office.*

- **Prejudice to the conduct of public affairs**

*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**

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

- **Health and safety**

*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**

*Information is exempt under FOI where it is covered by the Environmental Information Regulations.*

- **Personal information**

*Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act or the data protection principles, or if the person to whom the information relates would not have right of access to it because it falls under one of the exemptions to the Data Protection Act. 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**

*Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. If the school wished to disclose the information it would need to seek consent from the provider of the advice. The 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**

*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.*

The presence of protective marking (*Restricted, Confidential or Secret, with or without descriptors such as Staff, Management 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.

Where information has previously been withheld, it must not be assumed that any subsequent request 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. 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.

In all cases, before writing to the enquirer the person with given responsibility for FOI by the Trust 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

Having established that a qualified exemption(s) definitely applies to a particular case, the school will then carry out a public interest test to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. 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 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 more difficult. Applying the test will depend to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in the school and possibly further afield.

Factors to take 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?
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 your 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?

- Potential or actual embarrassment to, or loss of confidence in, the school, staff Trustees or Governors is NOT a valid factor.
- The fact that the information is technical, complex to understand and may be misunderstood may not, in itself, be a reason to withhold information.
- 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.

- 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.
- 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?

The school will record the answers to these questions and the reasons for the answers, and decide how important each factor is in the circumstances before making an 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.

## **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 school will contact the enquirer within 20 working days stating that a particular exemption applies and will include 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 that this decision is made and communicated within 20 days, but where this is not possible it is suggested that no more than 10 working days beyond the 20 days should be allowed).

## APPENDIX 5 – STANDARD LETTERS

Dear

Thank you for your request for information received on .....

We have conducted a thorough search of our records and, unfortunately, we are unable to locate the information you requested. This may be because the school has never held this information or that the information is older than the statutory requirements for retention and it has been legally destroyed in accordance with our retention schedules.

If you have any comments relating to how your request has been handled by the school, please contact *<Name and address of contact for complaints procedure>*.

Yours sincerely,

Dear

Thank you for your request for information, received on ..... To the best of our knowledge, the requested information is not held within the school. However, we believe that *<Name and address of organisation>* may hold the information you require. We will, therefore, need to transfer the request to them.

If you have an objection to this transfer you should let us know as soon as possible by writing to *<Name of person dealing with request>* at the school or telephoning *<him/her>* on 01245 .....

If you have any comments relating to how your request has been handled by the school, please contact *<Name and address of contact for complaints procedure>*.

Yours sincerely,

Dear

Thank you for your request for information received on ..... From the information described, we have been unable to identify the information you require.

Please provide the school with more information relating to *<Include the specific information you require – try to ensure that terms that may be unfamiliar to the requestor are explained>*.

The Freedom of Information Act 2000 requires that we deal with requests such as this within 20 working days, although we are not required to include the time whilst waiting for clarification of a request. We will endeavour to proceed with your request as soon as you supply the information requested above. If we have not received a reply within three months we will treat this request as cancelled.

If you have any comments relating to how your request has been handled by the school please contact *<Name and address of contact for complaints procedure>*.

Yours sincerely,

Dear

Thank you for your request for information, received on .....

The information which you requested is already available to the public via our school publication scheme, which is available from the school office or on our school website

If you have any comments relating to how your request has been handled by the school, please contact *<Name and address of contact for complaints procedure>*.

Yours sincerely,

Dear

Thank you for your request for information received on ..... It is estimated that the time to find this information will be ..... hours. The cost of this search will exceed the statutory ceiling of £450.00 for free searching time allowed under the Freedom of Information Act 2000 [The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004].

To proceed with your request we will require a fee of £..... *<supply details of local address and payment details>*. We will continue with the search on receipt of payment; however, if we have not received a reply within three months we will cancel the request.

If you have any comments relating to how your request has been handled by the school, please contact *<Name and address of contact for complaints procedure>*.

Yours sincerely,