



**PENAIR  
SCHOOL**



## **Freedom of Information Procedure**

# Freedom of Information Act 2000.

## Procedure for Dealing with Requests

*Note: This is adapted from the DfES Guide for Maintained Schools on Full Implementation from January 2005, with the exception of paras 17 – 21 which have been changed to reflect amended guidance.*

1. To handle a request for information the governing body or delegated person will need to ask themselves a series of questions. These are set out below and shown on pages 7-8 as process maps.

### Is it a FOI request for information?

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

- 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, follow your existing school DPA guidance.
- 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. If the enquiry is about environmental information, follow the guidance on the IC's website [here](#) or the DEFRA website [here](#).
- FOI enquiries are concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the FOI Act. All requests for information that are not data protection or environmental information requests are covered by the FOI Act.

### Is this a valid FOI request for information?

3. An FOI request should:

- be **in writing**, including email or FAX;
- **state the enquirer's name and correspondence address** (email addresses are allowed);
- **describe the information requested** - there must be enough information to be able to identify and locate the information<sup>1</sup>; and
- not be covered by one of the other pieces of legislation.

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<sup>1</sup> 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 you notify the enquirer that you need further information to enable you to answer, you 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.

4. Verbal enquiries are not covered by the FOI Act. 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, you should ask the enquirer to put the request in writing or email, when the request will become subject to FOI.

### **Does the school hold the information?**

5. “Holding” information means information relating to the business of the school:

- the school has **created**, or
- the school has **received from another** body or person, or
- **held by another** body **on the school’s behalf**.

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

7. 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 got information the school might be expected to hold.

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

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

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

9. The Act 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 school<sup>2</sup>. This however does not provide an excuse for bad records management.

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

10. If the information is held by another public authority, such as your local authority, first check with them they hold it, 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 your school does hold.

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

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<sup>2</sup> It is not intended to include otherwise valid requests in which the applicant may make complaints or vent frustrations. In addition, you do not have to comply with repeated identical or substantially similar requests from the same applicant unless a “reasonable” interval has elapsed between requests.

11. 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.

12. 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?**

13. 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 and are mainly intended to protect sensitive or confidential information.

14. 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. Therefore, unless it is in the public interest to withhold the information, it has to be released.

### **What if the request is for personal information?**

15. Personal information requested by the subject of that information is exempt under the FOI Act 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?**

16. Personal information requested by third parties is also exempt under the FOI Act where release of that information would breach the Data Protection Act. If a request is made for a document (e.g. Governing Body minutes) which contains personal information whose 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. The procedure for redaction is here<sup>3</sup>.

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<sup>3</sup> 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 Act under which this passage is exempt; iv) explain in the covering letter that the relevant exemptions are marked in the

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

17. The Act allows governing bodies to charge for providing information. For further information, see Appendix 4

18. The first step is to determine if the threshold (currently £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.

19. If a request would cost less than the appropriate limit, (currently £450) 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 appropriate limit, (£450) the school 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

20. Schools will however wish to consider whether calculating the cost of the fee outweighs the cost of providing the information. In practice we recommend that schools respond to straightforward enquiries free of charge and charge where the costs are significant.

21. If you are going to charge you must send the enquirer a fees notice and do not have to comply with the request until the fee has been paid.

## **Is there a time limit for replying to the enquirer?**

22. Compliance with a request must be prompt and certainly within the legally prescribed limit of 20 working days, excluding school holidays.<sup>4</sup> 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.

23. 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

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attachments and in the case of non-absolute exemptions, how the public interest test has been considered.

On no account must you use the computer to rewrite the document or email and simply 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 explains this.

<sup>4</sup> An order to this effect is to be made under section 10(4) of the Act and should take effect from 1 January 2005

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 – in practice, it is recommended by the Department that normally this should be within 10 working days.

24. 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?**

25. If the information is not to be provided, the person dealing with the request must immediately contact the person in the 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

- i) the fact that the responsible person cannot provide the information asked for;
- ii) which exemption(s) you are claiming 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 .
- v) 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 .
- vi) reasons for refusal on vexatious or repeated grounds
- vii) the internal complaints procedure.

26. 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?**

27. Any written (including email) 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. The procedure should be clear and non bureaucratic. Wherever practicable the review should be handled by someone not involved in the original decision. The Governing Body 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 outcome.

28. 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 to appeal to the Information Commissioner. The appeal should be made in writing to:

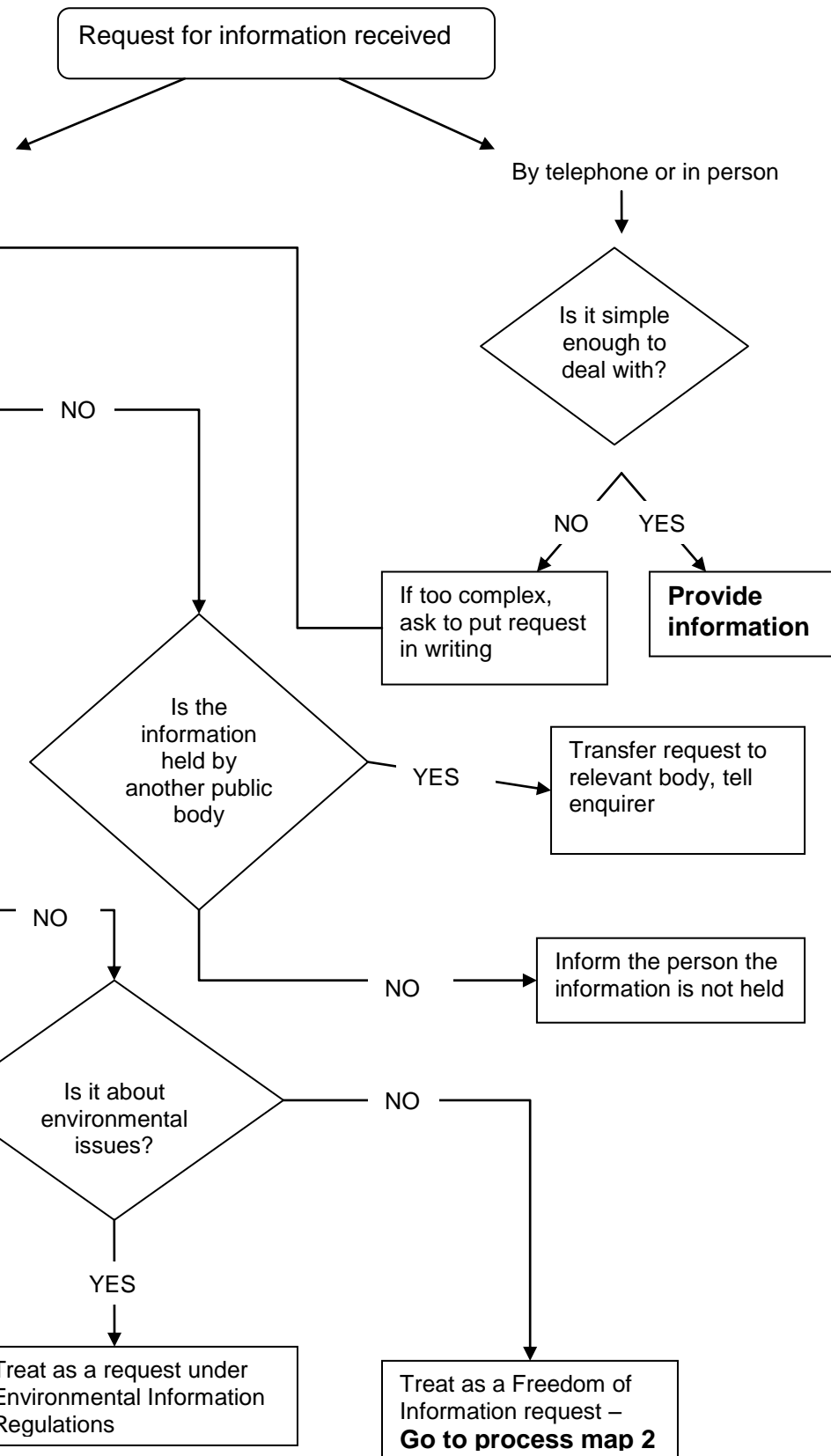
FOI Compliance Team (complaints)  
Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF

Written by Mr Guy Chappell- Director of Business & Enterprise  
Reviewed by Mr Nick Vincent- Governor  
Approved by the Governing Body on 19 March 2015  
The Governing Body agreed that future reviews be dealt with by the  
Community & Ethos Committee of the Governing Body next review November  
2018





## Process Map 1 for Dealing with Requests



## Process Map 2 for Dealing with Requests

