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KING EDWARD VII SCHOOL POLICY



Freedom of Information Policy

Document Adopted by Governing Body

Date: 1 September 2016

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Signed (Chair):

Date: 1 September 2016

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Freedom of Information Policy

Procedure for Dealing with Requests

In handling a request for information the Governing Body or delegated person will need to ask themselves a series of questions. These are set out below

Is it a Freedom of Information (FOI) request for information?

A request for information may be covered by one, or all, of the 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 the School's Data Protection Access 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 therefore could include enquiries about recycling, phone masts, playing fields, car parking, etc. If the enquiry is about environmental information, follow the guidance on the Information Commission's website or the DEFRA website.
- **Freedom of Information** enquiries are concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the Freedom of Information Act. All requests for information that are not data protection or environmental information requests are covered by the Freedom of Information Act (FoIA).

Is this a valid FOI request for information?

A FOI request should:

- Be in writing, by letter or email (a);
- State the enquirer's name, correspondence address and organisation they are representing;
- Describe the information requested – there must be enough information to be able to identify and locate the information(b);
- Describe why the information is required and how it will be used; and
- Not be covered by one of the other pieces of legislation or be available from other public sources.

Additionally, for any FOI request the School would like to be advised of:

- Which other organisations have been approached with the same FOI request.
- The reason why the information is required and how it will be used

a) Verbal enquires are not covered by the FOI Act. We ask the enquirer to put the request in writing or email, when the request will become subject to the FOI.

b) In cases where the enquiry is ambiguous, we will attempt to assist the enquirer to describe more clearly the information requested. 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.

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The response time limit commences from the date the further information is received.

Does the School hold the information?

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

- The School has created, or
- The School has received from another body or person, or
- Is held by another body on the School’s behalf

Information means both hard copy and digital information, including emails. If the School does not hold the information, we do not have to create or acquire it just to answer the enquiry, although a reasonable search should be made before responding that we have **not** got the information requested.

Has the information requested already been made public?

If the information requested is already in the public domain, for instance through the Publication Scheme, we will 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. This is taken to mean a request which is designed to cause inconvenience, harassment, or expense, rather than to obtain information, and would require substantial diversion of resources or would otherwise undermine the work of the School.

We do not have to comply with repeated identical or substantially similar requests from the same applicant unless a reasonable interval has elapsed between requests.

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

Consultation of third parties may be required if their interests could be affected by the release of the information, and any such consultation may influence the decision.

We do not need to consult where we are not going to disclose the information because we are 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 us to determine if information is exempt from disclosure, or
- The views of the third party may assist us to determine the public interest.

Does an exemption apply?

The presumption of the legislation is that we will disclose information unless the Act provides a specific reason to withhold it. There are more than 20 exemptions which are set out in **Appendix 1** and are mainly intended to protect sensitive or confidential information.

Only where we have real concerns about disclosing the information should we refer to

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see whether an exemption might apply. Even then, where the potential exemption is a qualified exemption, we 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 will be released.

Appendix 2 contains guidance on conducting a public interest test.

What if the request is for personal information about the applicant?

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 make a “**subject access request**” under the Data Protection Act if they wish to access information about themselves.

What if the details contain personal information?

Personal information requested by third parties is also exempt under the FOI where release of that information would breach the Data Protection Act. If a request is made for a document 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.

The procedure for redaction, or blocking out information, is to mask the passages which are not to be disclosed and then photocopy the document. Annotate in the margin against each blank passage the exemption and section of the Act under which the 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.

Under no circumstances should the document be rewritten, so that the resulting document appears as though it does not contain the exempted passage.

How much can we charge?

The Act allows Governing Bodies to charge for providing information.

The first step is to determine if the threshold (currently £450) would be exceeded. Staff costs should be calculated at £25 per hour, regardless of which staff member would be undertaking the work. We can take account of the time it takes to determine if the information is held, the time to locate and retrieve the information or extract the information from other documents. We cannot take into account the costs involved in determining whether the information is exempt.

If a request would cost less than the appropriate limit in force at the time of the request, the School can only charge for the cost of informing the applicant whether the information is held, and communicating the information to the applicant. This may include photocopying, printing and postage.

If a request would cost more than the appropriate limit in force at the time of the request, the School can:

- turn the request down, or
- answer and charge a fee, or
- answer and waive the fee.

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School will consider whether calculating the cost of the fee outweighs the cost of providing the information. For relatively straight forward requests, the School will consider responding free of charge.

If the School makes the decision to charge, we will 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?

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

If a qualified exemption applies and we need more time to consider the public interest test, we will 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 – in practice, it is recommended by the Department that normally this should be within 10 working days.

Where we have notified the enquirer that a charge is to be made, the time period stops until payment is received and then resumes 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 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, we will send a refusal notice, which must contain:

1. The fact that the responsible person cannot provide the information asked for;
2. Which exemption we are claiming to apply;
3. Why the exemption applies to this enquiry if it is not self-evident;
4. The reasons for refusal if based on cost of compliance;
5. In the case of non-absolute exemptions, how we have applied the public interest test, specifying the public interest factors taken into account before reaching the decision.
6. Reasons for refusal on vexatious or repeated grounds
7. Details of 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 are to be retained for five years. There are no requirements to keep records where we have supplied the information requested, however a register of FOI requests will be maintained by the PA to the Headteacher.

What do we do if someone asks a follow up question?

If an applicant requests a follow up question this is treated as a new request.

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Who has delegated responsibilities?

The Governing Body has **delegated responsibility** for compliance with the FOI Act to **the Headteacher** who has sub-delegated the day to day responsibility to the **School Business Manager**.

The SBM will be responsible for the coordination of responses to all enquiries.

What do we do if someone complains?

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. Wherever practicable the review should be handled by someone not involved in the original decision. The Governing Body will set a target time for determining complaints and publish information on the success rate in meeting the target time. The School will 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 will review procedures to prevent any recurrence. When the outcome upholds the School’s original decision or action, the applicant will 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

Tel: 0303 123 1113

Associated Documents

The following documents have relevance to this policy:
FOI Publication Scheme

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FREEDOM OF INFORMATION POLICY – APPENDIX 1

Appendix 1 – Exemptions

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

We will not withhold information in response to a valid request unless one of the following applies:

- An exemption to disclose, or
- The information sought is not held, or
- The request is considered vexatious or repeated, or
- The cost of compliance exceeds the threshold

The duty to confirm or deny

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

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

Exemptions

A series of exemptions are set out in the Act which allow the withholding of information in relation to an enquiry. Some are very specialised in their application, such as national security, and are not normally relevant to the Schools.

There are more than 20 exemptions but the School is likely to use only 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 test, 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 Act at the time of writing. Even where an absolute exemption applies:

- It does not mean that we cannot disclose in all cases; it means that 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.

The absolute exemptions in the Act are set out below.

- a. Information accessible to the enquirer by other means (section 21) – 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 the alternative route. This exemption includes cases where you

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are required to give information under other legislation, or where the information is available under via the Publication Scheme.

- b. Information dealing with security matters (section 23) – This applies to information directly or indirectly supplied by, or relating to, bodies dealing with security matters such as MI5, MI6, Special Forces, etc.
- c. Court records (section 32) – This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.
- d. Parliamentary Privilege (section 34) – This exempts information if it is required for the purpose of avoiding an infringement of the Parliamentary privilege.
- e. Prejudice to the effective conduct of public affairs (section 36) – This relates to the maintenance of the collective responsibility of Ministers.
- f. Personal information (section 40) – Where the enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act.
- g. 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.
- h. 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 the information.

The qualified exemptions in the Act are set out below.

- a. 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 publication date. This could apply to statistics published at set intervals, statutory accounts, and similar information.
- b. National security (section 24) – Information is exempt for the purposes of safeguarding national security.
- c. Defence (section 26) – Information is exempt if its disclosure would prejudice the defence of the UK.
- d. International relations (section 27) – Information is exempt if its disclosure would, or would be likely to, prejudice relation between the UK and any other state.
- e. Relations within the UK (section 28) - Information is exempt if its disclosure would, or would be likely to, prejudice relations between any administration in the UK.
- f. The economy (section 29) – Information is exempt if its disclosure would, or would be likely to, prejudice the economic or financial interests of the UK.
- g. 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.
- h. Law enforcement (section 31) – Information which is not exempt under Section 30 may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others:
 - i. The prevention or detection of crime

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- j. The apprehension or prosecution of offenders
- k. The administration of justice
- l. 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.
- m. 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.
- n. The duty to confirm or deny does not arise where prejudice would result to any of these matters.
- o. Audit functions (section 33) – Information is exempt if 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.
- p. 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.
- q. Prejudice to the conduct of public affairs (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.
- r. 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.
- s. 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.
- t. Environmental information (section 39) – Information is exempt under FOI when it is covered by the Environmental Information Regulations.
- u. Personal information (section 40) – 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 a 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 relations to this information if doing so would be incompatible with any of the above.
- v. Legal professional privilege (section 42) – Legal professional privilege covers any advice given by legal advisers, solicitors or barristers. Generally such information will be privileged. If the School wishes to disclose the information, we 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.
- w. 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 Schools. 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.

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Protective markings and Applying Exemptions

When considering if an exemption to disclosure should apply, we will bear in mind that the presence of a protective marking (Restricted, Confidential or Secret) 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, we will 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 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. To help ensure this, every case of refusal is reviewed by the Headteacher of the School or the Governing Body.

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FREEDOM OF INFORMATION POLICY – APPENDIX 2

Applying the Public Interest Test

Having established that a qualified exemption definitely applies to a particular case, we must then carry out a 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. Although precedent and a 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

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. 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 upon other legislation e.g. Data Protection Act?
Is disclosure likely to increase public participation on the 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

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