

Freedom of Information Act Guidance

About this Guidance

This guidance provides an overview of the Freedom of Information Act and explains what the school and the Trust needs to do to meet its requirements.

Each request for information needs to be considered on an individual basis, so it is not possible to cover every consideration here. However, further support and advice is available from ODST's DPO at any point, so please don't hesitate to get in contact if you would like to discuss a Freedom of Information request.

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1. The Freedom of Information Act 2000

The Freedom of Information Act 2000(FOI Act) provides public access to information held by public authorities.

It does this in two ways:

- public authorities are obliged to publish certain information about their activities
- members of the public are entitled to request information from public authorities.

2. What do the School and Trust need to do?

The FOI Act covers any recorded information that is held by your School and Trust (as a public authority). Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

There are 3 things the school and Trust need to do:

1. **Adopt and promote a model FOI publication scheme.** The Information Commissioner's Office (ICO) produced a model FOI publication scheme which it expects public authorities (including the school and Trust) to adopt in full, without alteration, and maintain.
2. **Produce and promote a supporting Guide to Information.** The model publication scheme commits the school and Trust to '*produce and publish the method by which the specific information will be available so that it can be easily identified and accessed by members of the public.*'

The ICO produced a template Guide to Information which can be used for this purpose, and this should be completed and promoted alongside the model scheme.

If you prefer, the ICO's original Guide to Information template can be found [here](#).

There is also a supporting document from the ICO on [how to complete the Guide](#), plus a [Definition document](#).

3. **Publish a schedule of fees.** Information available through a school and Trust publication scheme should be readily available at a low cost or free of charge to the public. If a school or Trust makes a charge, it must be justifiable, transparent and kept to a minimum.

The template Guide to Information includes a column to add the details of any charges, plus a schedule of charges template to show how any costs have been arrived at.

All of the above should be readily available through your website, noticeboards, newsletters, or posters in places where people access your services.

Where it is not practicable to make information available on a website, or when an individual does not wish to access the information from a website, you must indicate how the information can be obtained (this should be set out in your Guide to Information).

3. Receiving a request

Anyone has a right to request information from your school or trust. You have two separate duties when responding to these requests:

- to tell the applicant whether you hold any information falling within the scope of their request
- to provide that information.

For a request to be valid under the Freedom of Information Act it **must be in writing** (unlike subject access requests under the GDPR), but requesters do not have to mention the FOI Act or direct their request to a designated member of staff.

Any letter or email to your school or Trust asking for information is a request for recorded information under the FOI Act.

However, this doesn't mean that every enquiry has to be dealt with formally as a request under the FOI Act. Many enquiries can be dealt with as part of your school or Trust's normal practice of providing information, e.g., a parental enquiry about whether there is a space for their child.

The provisions of the FOI Act only need to come into force if:

- the requested information cannot be provided straight away or
- the requester makes it clear they expect a response under the FOI Act.

N.B. It is wise to bear in mind that disclosures under the FOI Act are 'to the world', so anyone may see the information.

4. Timescales

You normally have 20 school (working) days to respond to a request; or 60 working days, if this is shorter, which is helpful across the summer holidays.

5. Seeking Clarification

If you are not clear what information is being requested, you must contact the requester as soon as possible to seek clarification. It would be good practice to explain any options that might be available and ask whether these might adequately answer the request.

You do not have to deal with the request until you have received whatever clarification is reasonably needed.

6. Format

There are a number of ways the information can be made available, such as by email, via a secure link, as a printed copy or by arranging for the requester to view the information.

You can decide what seems the most reasonable in the circumstances. If the requester has made their request by email, and the information is an electronic document in a standard form, it would be reasonable to reply by email and attach the information.

However, requesters do have the right to specify their preferred means of communication, in their initial request.

You may also want to consider whether you want to include anything else with the information, such as explanatory or background context.

For example, if so much of the document has been redacted so that it is difficult to read, you could consider what else you can do to make the information understandable and useful for the requester.

It is wise to keep a copy of any redacted and unredacted versions in case of any queries or complaints.

7. Charging a Fee

The FOI Act doesn't allow you to charge a flat fee, but it does allow you to recover your communication costs, such as for photocopying, printing and postage.

You cannot normally charge for any other costs, such as for staff time spent searching for information.

However, the *Freedom of Information (Appropriate Limit and Fees) Regulations 2004* set a maximum cost limit of £450 for schools and Trusts as a result of responding to a FOI request.

If you estimate that the cost of complying with a request would exceed this cost limit, you can offer to supply the information and recover your full costs (including staff time), rather than refusing the request. See section 10 'Refusing a Request' on page 7 for more detail.

If you want to charge a fee, you should let the requester know and you do not need to send the information until you have received the fee.

Once you have let the requester know that there will be a fee for providing the information, the clock stops until the fee has been paid.

8. If the Information isn't held

The FOI Act only covers recorded information your school/trust holds. When compiling a response, you may have to draw from multiple sources of information you hold.

But you are not required to carry out further analysis to provide an answer. Nor are you required to find out information from elsewhere if you don't already have the relevant information in recorded form.

If you don't have the information the requester has asked for, you can comply with the request by letting them know in writing. If you know that the information is held by another public authority, it would be good practice to transfer the request to them or advise the requester to redirect their request.

9. Exemptions

There are a number of exemptions that can apply in certain circumstances e.g., if harm could arise, or be likely to arise, from disclosure; or cause prejudice to a criminal investigation or to someone's commercial interests.

There is also an exemption for personal data, if releasing it would not meet the requirements of the UK's data protection laws (UK GDPR and UK Data Protection Act 2018).

In some cases, the FOI Act will allow you to refuse to confirm or deny whether you hold information.

Most of the exemptions are not 'absolute' and a public interest test may need to be applied on a case-by-case basis when deciding whether to release information.

The public interest test involves weighing the public interest in disclosure against the public interest in maintaining the exemption; whilst bearing in mind the principle behind the FOI Act is to release information unless there is good reason to withhold it.

10. Refusing a Request

A request can be refused if:

- it would cost too much, or take too much staff time, to deal with the request
- The request is vexatious
- The request repeats a previous request from the same person.

10.1. Refusing a request on the grounds of cost

The cost limit for complying with a request (or a linked series of requests from the same person or group within 60 working days) is set down in law as £450 for schools and Trusts. See the *Freedom of Information (Appropriate Limit and Fees) Regulations 2004*.

You can refuse a request if you estimate that the cost of compliance would exceed this limit.

You do not have to do the work covered by the estimate before deciding to refuse the request. However, the estimate must be reasonable and follow the rules in the *Freedom of Information (Appropriate Limit and Fees) Regulations 2004*.

This means that when estimating the cost of compliance, you can only take into account time needed to:

- determining whether you hold the information
- finding the requested information, or records containing the information
- retrieving the information or records
- extracting the requested information from records.

You are not allowed to take into account time needed to:

- decide whether any exemptions apply
- redact any exempt information
- carry out the public interest test, as appropriate.

The Regulations state that the staff time involved should be rated at £25 per hour regardless of who carries out the work. Therefore, based on the £450 limit, this equates to 18 hours work.

10.2. Refusing a request on the grounds it is vexatious

The FOI Act allows schools to take into account the context and history of a request, including the identity of the requester and previous contact with them.

The decision to refuse a request as vexatious often follows a long series of requests and correspondence.

The key question to ask is whether the request is likely to cause a disproportionate, or unjustifiable level of distress, disruption or irritation.

N.B. It is the request that is considered vexatious, not the requester. So, if, after refusing a request as vexatious, you receive a subsequent request from the same person, it can only be refused if it also meets the criteria for being vexatious.

10.3. Refusing a request because it is repeated

Requests for information can be refused if they are repeated, regardless of whether they are vexatious. They need to be identical or substantially similar to one made previously from the same requester.

The time scale between the requests also needs to be considered. A request cannot be refused on the grounds it is repeated once a reasonable time period has passed.

What's reasonable is not defined in the FOI Act. It will depend on the circumstances, e.g., how often the information changes, why the requester is asking again for the information.

10.4. Letting the requester know

If you are refusing all or any part of a request, the requester must be sent a written refusal notice.

This must:

- explain what provision of the Act is being relied on to refuse the request and why
- give details of any internal review (complaints) procedure offered (or state that you do not have one). It is good practice to provide details.
- explain the requester's right to complain to the ICO, providing contact details.

11. School/Trust Records

It is advisable to keep a log of any Freedom of Information requests to include details of the request, what has been shared, any information withheld, on what grounds and why etc. In this way, you have a record to refer back to if necessary.