All Souls' Catholic
PRIMARY SCHOOL

Catholic Education Service

Freedom of Information

Guidance Note

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Freedom of Information

Comprehensive information and guidance on the Freedom of Information Act 2000 can be found on the Information Commissioner's website at www.ico.gov.uk

References in this Guidance Note to schools includes colleges and academies.

What is the purpose and objective of the Freedom of Information Act 2000?

Broadly speaking, The Freedom of Information Act 2000 ("FOIA") was designed to allow public access to information held by public authorities. It places a duty on public authorities to:

- Publish certain information about their activities;
- Provide certain information to the public where they make a request for information from the public authority.

The main objective of the FOIA is to ensure the public has access to information about the activities of public authorities, unless there is a good reason why they should not know. The aim is to engender public confidence in public authorities and to support the achievement of transparency and accountability.

The Information Commissioner's Office ("ICO"), the regulator of the FOIA, makes it clear that disclosure of information by a public authority should be the default position i.e. that information held by a public authority should only be kept private if there is a good reason and only where it is permitted by the FOIA.

How does the Freedom of Information Act 2000 apply to Schools?

Schools are public authorities and, as such, are bound by the provisions of the FOIA.

What "information" can a school be expected to provide?

The FOIA only covers information that is *recorded* by a public authority in England and Wales (for our purposes).

"Recorded" information is all information, not just official documents, and so includes, for example, drafts, notes, emails, recordings of telephone conversations, CCTV recordings etc. It also includes recorded information received from third parties as well as information created and recorded by the public authority itself.

The obligation extends to information *already* recorded and excludes information inside someone's head. This means that a school does not need to create a record following a request for information if a record does not already exist, neither does it have to question staff about subjects they may know about to provide a record of the information requested.

Who can make a Freedom of Information Act 2000 Request ("FOIA Request")?

Anyone can make a FOIA Request; it can be in the name of an individual or an organisation.

What form does the FOIA Request have to take?

In order for a FOIA Request to be valid:

- It should be made in writing (which includes all forms, e.g. letter by post or fax, email, twitter message, text message etc)
- It should include an address for correspondence
- It should describe the information requested – it need not specify a particular document, just the information required.

The FOIA Request need not expressly state that it is a request being made under the FOIA.

A FOIA Request does not have to include the requester's real name. The school may only seek to verify the identity of the requester if it has reasonable grounds to do so e.g. to identify if it is a repeated request for the same information from the same person. There is specific guidance relating to FOIA Requests where the identity of the requester is unknown which can be accessed on the ICO website.

The ICO has published guidance entitled *"Recognising a request made under the Freedom of Information Act (Section 8)"* which provides information to help public authorities to fully understand their obligations and to promote good practice.

What if the FOIA Request is not made in the valid form?

A school cannot ignore a FOIA Request just because it is not validly made. The school should respond to the requester, drawing their attention to the FOIA and advise the requester how to make a valid application under the FOIA.

What obligations do schools have once they receives a FOIA Request?

The obligation on the school on receipt of a FOIA Request is twofold; (i) to tell the requester whether it holds any information falling within the scope of the FOIA Request and (ii) to provide that information.

How long does a school have to respond to a FOIA Request?

The General Data Protection Regulation [GDPR] that came into force on 25 May 2018, has impacted on the timescales for responding to FOIA requests. Tighter deadlines have been introduced and FOIA requests must be responded to "without undue delay".

From the date of receiving a FOIA request, a school has one month to respond. If a school receives a complex request or multiple requests, they can extend the timescale for a maximum of two further months. In order to legitimately extend the timescale,

the school must (within one month of receiving the FOIA request) write to the individual requesting the information notifying them of the extension and providing a reason.

The one month timescale is likely to present issues for schools when requests are received during summer closure periods. Therefore, schools will need to consider an appropriate strategy for compliance with the timescales.

Can a school amend/delete the information?

Once a FOIA Request has been received a school must not amend or delete the recorded information.

Can a school charge for dealing with a FOIA Request?

A school cannot charge a fee to recover the costs of communicating with the requester or for time spent collating information and responding to a FOIA Request.

However, if a request is "manifestly unfounded or excessive, in particular because of its repetitive character", then a "reasonable fee" can be charged. However, it is unclear what threshold must be met in order for a request to be "manifestly unfounded…" and the meaning is open to EU interpretation.

It should be noted that if the cost of complying with a FOIA Request exceeds the "costs limit" the school may refuse to comply (see below).

Is there any guidance to assist a school in responding to a FOIA Request?

The Secretary of State for Constitutional Affairs has issued a Code of Practice (called the s.45 FOIA Code of Practice) which makes recommendations to public authorities on how to handle FOIA Requests. A copy can be accessed on the ICO website.

The ICO has issued various guidance documents, in particular, *"Interpreting and Clarifying Requests"*, to assist public authorities to understand what they must consider when interpreting a request, and *"Recognising a request made under the Freedom of Information Act (Section 8)",* as referred to above.

What if the school does not have the information requested?

The school should ensure that it has carried out adequate and properly directed searches for the information requested before concluding that it does not have it.

Following such conclusion, the school should notify the requester in writing that it does not hold the information requested.

It must be remembered that a school should release the information it holds unless there is a good and permissible reason not to do so.

Can a school refuse to comply with a FOIA Request where they *do* hold the information?

A public authority may refuse to comply with a FOIA Request if:

- It would cost too much or take too much staff time to deal with.
- The FOIA Request is vexatious.
- The FOIA Request repeats a previous FOIA Request from the same person.

In terms of cost, this is referred to as the "costs limit". For schools the costs limit is £450. In calculating the costs of complying with a FOIA Request, the public authority is entitled to aggregate the costs of all requests received within a 60 day period from the same person or from persons who seem to be working together. The ICO provide guidance on working out whether the cost would be exceeded.

Are there any exemptions which apply so that a school need not provide the information?

There are various exemptions under the FOIA that mean that the public authority can refuse to provide the information where it holds it. Exemptions available include:

- Information that is already accessible;
- Information that is intended for future publication;
- Information which may endanger Health & Safety;
- Personal information of requester (this should be treated as a Subject Access Request, to be handled in accordance with the provisions of the GDPR);
- Breach of confidentiality;
- Legal Professional Privilege;
- Trade secrets and prejudice to commercial interests.

Some exemptions are "absolute" in nature. Others which are "qualified" require consideration to be given to whether the public interest in maintaining the applicability of the exemption outweighs the public interest in disclosing the information. If the public interest in applying the exemption wins in that balancing act, then the public authority may refuse a FOIA Request. This balancing act is referred to as the "Public Interest Test".

A public authority is entitled to up to 20 extra working days to perform the Public Interest Test to determine whether there is a valid exemption to the general duty on them to provide the information requested. The public authority must contact the requester within the original time limit notifying them of the exemption they are seeking to rely upon and provide an estimate of time as to when they will have completed the Public Interest Test.

Where a FOIA Request is refused where the public authority is relying on an exemption(s), the public authority must notify the requester by sending them a Notice of Exemption. The public authority must state that it holds the information but is not obliged to disclose it due to the exemption which applies.

Is it ever justified for a Public Authority to refuse to confirm or deny whether they hold information requested?

It may be advisable for a public authority to refuse to confirm or deny whether they hold information requested where, for example, a requester asks for information or evidence of criminal activity by a named individual. In such a case it may well be reasonable and, indeed, necessary, neither to deny or confirm as to do so may be unfair to the individual named and/or prejudicial to a police investigation.