

Freedom of Information guide

What is a Freedom of Information request:

A Freedom of Information (FOI) request is a way of asking a public authority to receive information it holds. It gives public access to information held by public authorities.

The Freedom of Information Act 2000 or the Environmental Information Regulations (EIR) 2004 sets out the law relating to public access to information held by public authorities.

Who can make a request:

Any member of the public could make an FOI or EIR request. The request may be made by a private individual or a person on behalf of a company.

The request must include the requesters real name and should not be made under a pseudonym.

You are only permitted to request proof of identity if you believe that the request is not being made by a legitimate person.

How should a request be made:

A request must be made in writing, and it should include the name and address (or email address) of the requester.

The request should include details of the information they wish to receive.

The requester does not need to refer to the Freedom of Information Act in their request to make it valid.

How should we respond to a request:

You will need to respond to the request in writing.

You have 20 working days to respond to the request.

You can seek clarification from the requester if you are not clear on what information they would like to receive. The timescale for responding to the request will reset from the date that you receive clarification.

You must provide the information requested if you hold it (even if that means pulling it together from several different sources).

You should carry out an adequate and properly directed search for the requested information before providing a response.

If you DO NOT hold the information, you should respond to the requester to notify them of this and, where applicable, point them in the direction of the public authority that may hold that information.

If you DO hold the information, you should respond to the requester with that information usually in the same way that they have made the request e.g. if they have emailed to request the information you should respond via email. The requester does have the right to request the information in any format.

Providing a response to the requester is the same as making the information available for anyone to see. The requester is free to share that information however they wish.

You may receive requests from journalists who will use the information you provide to publish an article, or you may receive requests from a site called 'What do they know,' which asks for your response to be published back on that website (available to anyone via a Google search).

When can we refuse to respond to a request:

You cannot refuse a request because you do not want to share the information publicly. You can only refuse a request in limited circumstances, the most common of which are:

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

Costs:

This is covered by s.12 FOI Act 2000.

You can refuse a request if you estimate that the cost implications for dealing with the request would exceed £450. The estimate used to determine whether the cost limit is exceeded must be reasonable and follow the rules set out in the Freedom of Information (Appropriate Limit and Fees) Regulations 2004.

When estimating the cost of compliance, you can only consider the following:

- Determining whether you hold the information,
- Finding the requested information,
- Retrieving the information or records, and
- Extracting the information from the records.

The main cost is likely to be staff time. This is to be calculated at £25 per hour irrespective of which staff member is involved with the request. This means that you would be issuing a refusal notice if it would take staff longer than 18 hours to pull the information together.

If you refuse a request due to costs, you must issue a refusal notice. You should speak to your DPO about this.

If the requester agrees in writing, you could carry out the request and charge them for anything over and above the £450 limit. This would be at a rate of £25 per hour.

Vexatious requests:

You can refuse a request if it appears to be vexatious.

You cannot base this on the identity or intentions of the requester. It must be the request itself that is vexatious. Although sometimes it may be the behaviour of the requester that helps to determine that a request is vexatious, e.g. they have made repeated requests over a short period of time.

You should consider the context of the request, the history of the request and your previous contact with the requester.

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

You must consider the request carefully and determine whether it is the request that is vexatious. You should keep notes on your determination, even if you do not provide this information to the requester.

You should consult your DPO before refusing a request for being vexatious.

Repeated requests:

You can refuse a request if it is identical or significantly similar to one that you have previously responded to from the same requester. There must be a complete or significant overlap between the current and previous requests.

You can't refuse a request from the same requester just because it is about a related topic to a previous request.

You can't refuse a request from the same requester if a reasonable period has elapsed since the last request. There is no definition of a reasonable period.

You should consult your DPO for further advice on when you can refuse a repeated request.

Other exemptions:

Exemptions exist to protect information that should not be disclosed.

There are several other exemptions that may apply and mean that you can refuse or partially refuse a request.

Absolute exemptions are those where you can completely withhold information. The most common ones that will apply to schools and Trusts are:

- Section 21 FOIA – information available to the applicant by another means e.g. it is already published by the DfE.

- Section 40(1) FOIA – information which constitutes personal data relating to the requester as the data subject.
- Section 40(2) FOIA – information which constitutes personal data relating to someone other than the requester and the release of such would be prohibited by the Data Protection Act.

Qualified exemptions are those where you must consider the public interest test before deciding whether the information should be disclosed or not.

One example of a qualified exemption that you may rely on is the commercial interest exemption under s.43 FOIA.

What is the public interest test:

The public interest test will need to be applied before relying on any qualified exemption.

You must weigh up the public interest in releasing the information v the public interest in maintaining the exemption.

Step 1 – Identify what interests the exemption is designed to protect. Any prejudice you identify must affect these specific interests.

Step 2 – Assess the nature of the prejudice. It must be real, actual or of substance. There must also be a causal link between the envisaged prejudice and the disclosure of the information.

Step 3 – you must be able to show that the prejudice would, or would be likely to, occur.

Your DPO will be able to advise further on whether the public interest test has been met.

What are the timescales for responding to a request:

You have 20 working days to respond to a request.

If you need to seek clarification regarding the request, you will have 20 working days from the date you receive that clarification.

Record Keeping:

It is important to keep a record of all the Freedom of Information and Environmental Information Requests that you receive.

You are required to publish a Publication Scheme on your website which sets out where key information about the running of your school or Trust is held. This may be in a different location of your website, on a third parties' website (e.g. the DfE) or available on request from the office.

It is recommended that you keep a disclosure log which sets out all the requests you have previously received and your responses to those requests. This will assist with your obligation regarding

transparency, as if one person has asked for the information, others may be interested in receiving the same. It will save you from having to respond to lots of individual requests of the same nature.