

Schools - Freedom of Information Act quick guide

What is the Freedom of Information Act?

The Freedom of Information Act is a piece of legislation that gives anyone anywhere in the world the right to request access to information held by a public authority in this country.

“Public Authority” is defined within the Act and each Local Authority maintained school is considered an individual public authority for the purposes of this piece of legislation and the obligations it creates.

The right under the Act is two fold:

- (1) The right to know whether a public authority holds the information requested (the duty to confirm or deny), and
- (2) The right to have access to the information requested.

Both rights are subject to the exemptions contained within the Act – see below.

What it means for you and your school:

Freedom of Information requests can be for any information held and as such can be very wide ranging.

The following are examples of the types of requests that you could receive:

- Minutes of a particular meeting (including minutes of governors meetings).
- How much the school spent on a particular excursion.
- The schools policy in a particular area (e.g. bullying).

Requests for access to personal information from the child who is the subject of that information or their parent should be handled in line with access rights under the Data Protection Act (or Education Regulations where appropriate) and not the Freedom of Information Act (see “Data Protection Act quick guide” for more information).

How does an individual make a Freedom of Information Act request?

A Freedom of Information request must be made in a permanent form (e.g. in writing, by fax or email).

It must describe the information requested.

It must include the name and address (or email address) of the applicant.

However the request does not need to mention the Freedom of Information Act.

What should you do when you receive an FOI request?

Upon receipt of a Freedom of Information request your school has **20 working days** in which to provide a full response to the request.

If you are withholding information in reliance of one or more of the Act’s exemptions, then you should normally notify the applicant of this fact within 20 working days from receipt of the request. In your refusal notice you will need to include the following:

- State which exemption you are relying upon,

- State why the exemption applies (if it is not obvious)

More detail on what needs to be included in a refusal notice is contained with the Schools "Freedom of Information manual" which will be available on the schools website shortly.

What are the exemptions that enable the school to withhold information legitimately?

There are a number of exemptions contained within the Act, some of these exemptions are "absolute" and some are "qualified."

If you are relying on an absolute exemption then the information that is covered by that exemption can be withheld once it has been established that the exemption applies.

If you are relying on a qualified exemption, then once you have established that the information in question is covered by a qualified exemption, you must apply a "public interest test" before relying on the exemption. The "public interest test" requires you to consider the public interest in the disclosure of the information, against the public interest in maintaining the exemption in the particular circumstances of the case.

Listed below are the exemptions that may apply to information held by your school.

Absolute exemptions

Section 21 Information accessible to the applicant by another means (e.g. information already in the public domain).

Section 40(2) Personal Data (where disclosure to the applicant would breach the Data Protection Act 1998).

Section 41 Information provided in confidence (where disclosure would result in an actionable breach of confidence).

Section 44 prohibitions on disclosure (where disclosure is prohibited under another enactment or would be punishable as a contempt of court).

Qualified exemptions

Section 22 Information intended for future publication

Section 38 Health and Safety (where disclosure would endanger the physical or mental health, or safety of any individual)

Section 42 – Legally professionally privileged information (communications to or from lawyers for the purposes of asking for or receiving legal advice).

Section 43 Commercial interest (where disclosure of the information in question would prejudice the commercial interests of any party)

Other exemptions

Section 12 where the cost of compliance exceeds the appropriate limit (i.e. it costs more than £450 or takes more than 2 and a half days to collate the information requested).

Section 14 where the request is consider Vexatious or is a repeated request

Guidance to staff

Staff should be mindful when creating information as it could be subject to disclosure and any comments they make should be professional and appropriate.

The Freedom of Information Act should not effect how staff respond to normal requests for information they receive as part of their day to day work. Only consider the Freedom of Information Act if you are not sure if the information requested can be released.

Further information

More detailed guidance on this area is going to be produced shortly by the Council's Data Protection Advisor (Ian Goodwin). Should you have any specific questions in the meantime, please contact Ian on 07852303266, or alternatively, the Information Commissioner's Office (the national regulator of the Freedom of Information Act) is able to provide advice and can be contacted on 01625 545745.