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| Adopted and ratified by: | The Governing Body                      |
| Review Date:             | March 2024                              |
| Accountability:          | Assistant Principal- College Operations |
| Responsibility:          | All staff                               |
| For Action By:           | All staff                               |
| For Information to:      | All stakeholders                        |

## **Introduction**

The Freedom of Information Act 2000 gives individuals the right to access official information from public bodies. Under the Act, any person has a legal right to ask for access to information held by the college. They are entitled to be told whether the college holds the information and to receive a copy, subject to certain exemptions. While the Act assumes openness, it recognises that certain information is sensitive. There are exemptions to protect this information. Full details on how requests can be made are set out in section 1 of this policy.

Public authorities should be clear and proactive about the information they will make public. For this reason, a publication scheme is available and can be found at section 2 of this policy.

This policy does not form part of any individual's terms and conditions of employment with the College and is not intended to have contractual effect.

This policy should be used in conjunction with the College's Data Protection Policy.

## **Freedom of Information Requests**

Requests under Freedom of Information should be made to the Principal. However, the request can be addressed to anyone in the College. All staff need to be aware of the process for dealing with requests.

Requests for information that are not data protection or environmental information requests will be covered by the Freedom of Information Act.

*Data protection enquiries (or Subject Access Requests/SARs)* are requests where the enquirer asks to see what personal information the college holds about the enquirer. If the enquiry is a data protection request, the College's Data Protection Policy should be followed.

*Environmental Information Regulations* enquiries are those which relate to air, water, land, natural sites, built environment, flora and fauna, health and any decisions and activities affecting any of these. These could, therefore, include enquiries about recycling, phone masts, college playing fields, car

parking etc. If the enquiry is about environmental information, follow the guidance on the Department for Environment, Food and Rural Affairs (DEFRA) website.

Freedom of Information requests *must* be made in writing (including email) and should include the enquirer's name, correspondence address (email addresses are allowed) and state what information they require. There must be enough information in the request to be able to identify and locate the information. If this information is covered by one of the other pieces of legislation (as referred to above), they will be dealt with under the relevant policy/procedure related to that request.

If the request is ambiguous and/or the College require further information in order to deal with your request, the College will request this further information directly from the individual making the request. Please note that the College do not have to deal with the request until the further information is received. Therefore, the time limit starts from the date that the College receives all information required in order to deal with the request.

The requester does not have to mention the Act, nor do they have to say why they want the information. There is a duty to respond to all requests, telling the enquirer whether or not the information is held and supplying any information that is held, except where exemptions apply. There is a time limit of 20 college days (i.e., excluding college holidays) for responding to the request.

### **Information**

Provided all requirements are met for a valid request to be made, the College will provide the information that it holds (unless an exemption applies).

*Holding* information means information relating to the business of the college:

- That the college has created; or
- That the college has received from another body or person; or
- Held by another body on the college's behalf.

Information means both hard copy and digital information, including email.

If the information is held by another public authority (for example, the Local Authority), check whether they hold the information and if so, transfer the request to them. If this applies, the College will notify

the enquirer that they do not hold the information and to whom they have transferred the request. The College will continue to answer any parts of the enquiry in respect of information it does hold.

When the College does not hold the information, it has *no duty to create or acquire it* just to answer the enquiry; although a reasonable search will be made before confirming whether the College has the information requested.

If the information requested is already in the public domain, for instance, through the Publication Scheme or on the College's website, the College will direct the enquirer to the information and explain how to access it.

The requester has the right to be told if the information requested is held by the College (subject to any of the exemptions). This obligation is known as the college's *duty to confirm or deny* that it holds the information. However, the college 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.

### **Vexatious Requests**

There is no obligation on the College to comply with vexatious requests. A vexatious request is one which is designed to cause inconvenience, harassment or expense rather than to obtain information and would require a substantial diversion of resources or would otherwise undermine the work of the college. However, this does not provide an excuse for bad records management.

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

### **Fees**

The College may charge the requester a fee for providing the requested information. This will be dependent on whether the staffing costs in complying with the request exceeds the threshold. The threshold is currently £450 with staff costs calculated at a fixed rate of £25 per hour (therefore 18 hours' work is required before the threshold is reached).

If a request would cost less than the threshold, then the college can only charge for the cost of informing the applicant whether the information is held and communicating the information to the applicant (e.g., photocopying, printing and postage costs).

When calculating costs/threshold, the College can take account of the staff costs/time in determining whether the information is held by the College, locating and retrieving the information and extracting the information from other documents. The College will not take account of the costs involved with considering whether information is exempt under the Act.

If a request would cost more than the appropriate limit (£450), the college can turn the request down, answer and charge a fee or answer and waive the fee.

If the College are going to charge they will send the enquirer a fees notice. The College do not have to comply with the request until the fee has been paid. More details on fees can be found on the Information Commissioner's Office (ICO) website.

If planning to turn down a request for cost reasons or charge a high fee, you should contact the applicant in advance to discuss whether they would prefer the scope of the request to be modified so that, for example, it would cost less than the appropriate limit.

Where two or more requests are made to the College by different people who appear to be acting together or as part of a campaign, the estimated cost of complying with any of the requests may be taken to be the estimated total cost of complying with them all.

### **Time Limits**

Compliance with a request must be prompt and within the time limit of 20 college days (this does not include the college holidays or weekends) or 60 working days if this is shorter. Failure to comply could result in a complaint by the requester to the ICO. The response time starts counting as the first day from the next working day after the request is received (so if a request was received on Monday 6<sup>th</sup> October the time limit would start from the next working day, the 7<sup>th</sup> October).

Where the College has asked the enquirer for more information to enable it to answer, the 20 college days start time begins when this further information has been received.

If some information is exempt this will be detailed in the College's response.

If a qualified exemption applies and the College need more time to consider the public interest test, the College will reply in 20 college 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.

Where the College has notified the enquirer that a charge is to be made, the time period stops until payment is received.

### **Third Party Data**

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

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 the College to determine if information is exempt from disclosure; or
- The views of the third party may assist the College to determine the public interest test.

Personal information requested by third parties is also exempt under this policy where release of that information would breach the Data Protection Act. If a request is made for a document (e.g., Governing Body minutes) 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 as set out in the redaction procedure.

### **Exemptions**

The presumption of the Freedom of Information Act is that the College will disclose information unless the Act provides a specific reason to withhold it. The Act recognises the need to preserve confidentiality and protect sensitive material in certain circumstances.

The College may refuse all/part of a request, if one of the following applies: -

- 1) There is an exemption to disclosure within the Act;
- 2) The information sought is not held;
- 3) The request is considered vexatious or repeated; or
- 4) The cost of compliance exceeds the threshold.

A series of exemptions are set out in the Act which allow the withholding of information in relation to an enquiry. Some are specialised in their application (such as national security) and would not usually be relevant to colleges.

There are two general categories of exemptions:-

- 1) *Absolute*: where there is no requirement to confirm or deny that the information is held, disclose the information or consider the public interest; and
- 2) *Qualified*: where, even if an exemption applies, there is a duty to consider the public interest in disclosing information.

### **Absolute Exemptions**

There are eight absolute exemptions set out in the Act. However, the following are the only absolute exemptions which will apply to the College: -

- Information accessible to the enquirer by other means (for example, by way of the College's Publication Scheme);
- National Security/Court Records;
- Personal information (i.e., information which would be covered by the Data Protection Act);
- Information provided in confidence.

If an absolute exemption exists, it means that disclosure is not required by the Act. However, a decision could be taken to ignore the exemption and release the information taking into account all the facts of the case if it is felt necessary to do so.



## Qualified Exemptions

If one of the below exemptions apply (i.e., a qualified disclosure), there is also a duty to consider the public interest in confirming or denying that the information exists and in disclosing information.

The qualified exemptions under the Act which would be applicable to the College are: -

- Information requested is intended for future publication (and it is reasonable in all the circumstances for the requester to wait until such time that the information is actually published);
- Reasons of national security;
- Government/international relations;
- Release of the information is likely to prejudice any actual or potential legal action or formal investigation involving the College;
- Law enforcement (i.e., if disclosure would prejudice the prevention or detection of crime, the prosecution of offenders or the administration of justice);
- Release of the information would prejudice the ability of the College to carry out an effective audit of its accounts, resources and functions;
- For health and safety purposes;
- Information requested is environmental information;
- Information requested is subject to legal professional privilege; and
- For *commercial interest* reasons.

Where the potential exemption is a qualified exemption, the College will consider the public interest test to identify if the public interest in applying the exemption outweighs the public interest in disclosing it.

In all cases, before writing to the enquirer, the person given responsibility by the College for dealing with the request will need to ensure that the case has been properly considered and that the reasons for refusal or public interest test refusal, are sound.

## Refusal

If it is decided to refuse a request, the College will send a refusals notice, which must contain:

- The fact that the responsible person cannot provide the information asked for;
- Which exemption(s) apply;
- Why the exemption(s) apply to this enquiry (if it is not self-evident);
- Reasons for refusal; and
- The College's 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.

### **Internal review**

The requester has the right to ask for an internal review if they are dissatisfied with the handling of a request.

Internal review requests should be made within 40 working days of the initial response. This deadline should be communicated to the requester in that response. We are not obliged to provide a review if it is requested after more than 40 working days.

Requests for internal review must make clear why they are dissatisfied with the original decision, detailing why they feel that the College has not complied with Freedom of Information Law.

### **Complaints and/or appeals**

Any written (including email) expression of dissatisfaction should be handled through the College's existing complaints procedure. Wherever practicable the review should be handled by someone not involved in the original decision.

The Governing Body should set and publish a target time for determining complaints and information on the success rate in meeting the target. The college should maintain records of all complaints and their outcome.

If the outcome is that the College's original decision or action is upheld, then the applicant can appeal to the Information Commissioner. The appeal can be made via their website or in writing to:

Customer Contact  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF