



## STATUTORY REQUESTS FOR INFORMATION POLICY & FREEDOM OF INFORMATION POLICY

<b>Policy Number</b>	0069		<b>Policy Author</b>	M Sherman
<b>Date of Issue/Reviewed</b>	July 2024		<b>Policy Ownership</b>	Finance & Operations
<b>Agreed by Governors Reviewed by Governors</b>	July 2020 May 2024		<b>Date of Next Review</b>	July 2025

## Statutory Requests for Information Policy

Requirements for managing requests for information to comply with the Freedom of Information Act 2000 (FOI), the Environmental Information Regulations (EIR), the General Data Protection Regulations 2016 and the Data Protection Act 2018.

Policy points are numbered. The numbering corresponds to explanations of 'why?' and 'how?' for each point further down the page.

### What must I do?

For all types of request for Information:

1. **MUST:** We must **correctly identify** the law which applies to the information being requested and manage the request in compliance with that law
2. **MUST:** Information should be **released** unless there a strong legal justification for withholding it.
3. **MUST:** Whenever we **refuse** to provide information, we must clearly and fully explain the reasons why
4. **MUST:** We must provide **advice and assistance** to people making a request.
5. **MUST:** We must always try to **reply** as quickly as possible, but always within the legal deadline.
6. **MUST:** All employees must promptly **provide** all relevant information to a request co-ordinator if asked for it
7. **MUST:** If we decide to **charge** for information, we must do so in accordance with a published policy.
8. **MUST:** Where reasonable and practical, we must provide the information in the **format** requested by the applicant.
9. **MUST:** When we respond to a request, we must tell the requestor about our **internal review** process.
10. **MUST:** When responding to a complaint, we must advise the requestor that they may **complain to the ICO** if they remain unhappy with the outcome.
11. **MUST:** We must maintain an up to date Publication Scheme available on our website to meet our obligations under FOI/EIR

### Why must I do it?

1. The requestor does not have to specify under what legislation they are making a request. It is our responsibility to correctly identify which legislation applies.
2. We serve the public. We should not hide information from them. The Acts are intended to make us more accountable to the public, to make our processes more transparent, and to encourage the public to trust us. Information should be released unless we can strongly justify withholding it (embarrassment is not a sufficient reason to withhold information). In some cases, we may have to release non-personal information because it is in the public interest although it might otherwise have been considered exempt. Also, it is a legal offence to deliberately withhold or destroy requested information where there is no legal reason to do so.

3. We will not be obliged to provide all or part of the information requested if a legal justification applies. If we believe a reason does apply then we must help the public to challenge our decisions effectively by giving our reasons and doing so clearly and fully in line with the requirements of the Acts. This is a legal requirement.
4. The Acts require us to assist requestors, especially where we may be considering refusing a request, in guiding the public on how to clarify or re-scope their request to achieve the best outcome. This is a legal requirement.
5. The laws provide statutory deadlines for responding to a request; FOI & EIR – 20 working days and DPA one month. There are limited reasons to extend the deadlines. The laws expect information to be well managed and accessible, therefore there is an assumption that requests should be routinely responded to well in advance of the deadline.
6. In order to comply with regulator and corporate targets for fulfilling requests, all employees have a role to play in making information relevant to the request available promptly so that a response can be drafted within the timescale.
7. The laws require us to make clear the basis for charging to ensure that charges are fair and un-obstructive. We must tell requestors whether a charge applies before we provide the information and we should tell them what that charge will be.
8. The acts duty on us to provide information in a format that the requester would find most convenient to their needs. We may refuse unreasonable demands and charge in certain cases, but in principle the requestor should be able to receive the information in the way they specify.
9. It is a requirement of the act to have an internal review process. Where a requestor expresses dissatisfaction with a response, this must be treated as a complaint. The act states that expressing dissatisfaction is enough to require us to treat it as such. The ICO requires us to complete the internal review process before it will accept an escalation of a complaint to their office.
10. This is a statutory requirement.
11. This is a statutory requirement.

## **How must I do it?**

1. Follow guidance and training to correctly identify whether the request should be handled under FOI, EIR or DPA/GDPR.
2. By following the points of this policy and accompanying guidance and training
3. Ensure the employee making decisions about what can be released and drafting the response has access to legal guidance in order to make the response full and compliant with the law.
4. Discuss the likely response with the requestor if their request is likely to be refused and explain options that would help them receive as useful a response as possible within the limits of the law. Although we should not ask requestors what they intend to do with the information they have requested, we can explain what we do hold and what is likely to be disclosable to them.
5. We must record performance against the statutory deadlines to ensure we are aware of how well we are complying with the law and to help make changes to processes if necessary.

6. Make sure the information you manage is accessible and well structured so that you can retrieve it quickly when requested.
7. It is not lawful to charge for information without a published policy explaining the basis for arriving at a fee. In the absence of a published policy, charges are not made.
8. There must be strong prohibitive reasons not to provide information in a format that is within our ability to provide. Conversion to a new format is however different to having to significantly edit and rearrange information to make it legible in the format requested. Under the latter circumstances, a refusal may be valid but advice should be sought if unsure.
9. Where a simple error has been made in the response it may be that the issue can be resolved informally. If not, then a full review of how the request was handled is required. This must be undertaken by an employee who was not involved in drafting or approving the original request, although the employee drafting the response may discuss how the original request was handled with those involved. The Basildon Academies Complaints Policy & Procedure is located on our website.
10. Ensure that the contact details for the ICO are provided to the requestor on any response documentation and explain when it is appropriate to escalate a complaint the ICO in order to make requestors aware of their rights
11. To enable requestors to understand the types of information the organisation holds, what format it can be disclosed in, and whether charges apply.

### **What if I need to do something against the policy?**

If you believe you have a valid business reason for an exception to these policy points, having read and understood the reasons why they are in place, please raise a formal request by contacting the school office.

### **Procedure for dealing with requests for information**

The Basildon Academies procedure for dealing with requests for information can be located within our Freedom of Information Policy, located on page 6.

### **Breach Statement**

Breaches of Information Policies will be investigated and may result in disciplinary action. Serious breaches of Policy may be considered gross misconduct and result in dismissal without notice, or legal action being taken against you.

### **References**

- Data Protection Act 2018
- Freedom of Information Act 2000
- Environmental Information Regulation 2005

- Education (Pupil Information) (England) Regulations 2005
- The Basildon Academies Freedom of Information Policy
- The Basildon Academies Complaints Policy & Procedure

# FREEDOM OF INFORMATION POLICY

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## 1.0 Introduction

The Basildon Academies (the Academy) is committed to the Freedom of Information Act 2000 ("FOIA") which came into force on 1 January 2005 and which applies to Academies with effect from 1 January 2011. The Academy is committed to the principles of accountability and the general right of access to information, subject to legal exemptions.

Under the FOIA, any person has a legal right to ask for access to information held by the Academy. They are entitled to be told whether the Academy holds the information, and to receive a copy, subject to certain exemptions. The Academy is under a duty to provide advice and assistance to individuals making requests under the FOIA. While the FOIA assumes openness, it recognises that certain information is sensitive and as explained within this policy, there are exemptions to protect this information.

This policy outlines the Academy's framework for managing requests. It will be reviewed by the Academy from time to time. The policy will also be revised as required to introduce any changes in regulation and statutory guidance to ensure it is always up to date.

To make a FOIA request by email please send to [admin@basildonacademies.org.uk](mailto:admin@basildonacademies.org.uk)

## 2.0 Procedure for dealing with requests

To handle a request for information the Trust or delegated person will need to ask themselves a series of questions. These are set out below:

### a. Is it a Freedom of Information (FOI) request for information?

A request for information may be covered by one, or all, of three information rights:

- **Data Protection enquiries** or **Subject Access requests** are where an enquirer asks to see what personal information the Academy holds about the enquirer. If the enquiry is a Data Protection request, follow the Academy's Data Protection Access guidance.
- **Environmental Information Regulations enquiries** relate to air, water, land, natural sites, built environment, flora and fauna, health, and any decisions and activities affecting any of these. These therefore could include enquiries about recycling, phone masts, playing fields, car parking, etc. If the enquiry is about environmental information, follow the guidance on the Information Commission's website ([ICO.org.uk](http://ICO.org.uk)).
- **Freedom of Information enquiries** are concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the Freedom of Information Act. All requests for information that are

not data protection or environmental information requests are covered by the Freedom of Information Act (FOI).

**b. Is this a valid FOI request for information?**

An FOI request should:

- Be in writing, including email or fax;
- State the enquirer's name and correspondence address (email addresses are sufficient);
- Describe the information requested – there must be enough information to be able to identify and locate the information; and
- Not be covered by one of the other pieces of legislation referred to above.

**Verbal enquiries**

Verbal enquiries are not covered by the FOIA. Such enquiries can be dealt with when the enquiry is fairly straightforward. However, for more complex enquiries, and to avoid disputes over what information was requested, we ask the enquirer to put the request in writing or email, when the request will become subject to the FOIA.

**Ambiguous enquiries**

In cases where the enquiry is ambiguous, the Academy should attempt to assist the enquirer to describe more clearly the information requested. Where possible, establish direct contact. The aim is to clarify the nature of the information requested and not to determine the aims or motivation of the enquirer. If the enquirer is notified that further information is needed the request does not need to be dealt with until the further information is received. The response time limit (see below) commences from the date the further information is received.

**c. Does the Academy hold the information?**

“Holding” the information means information relating to the business of the Academy which:

- The Academy has created, or
- The Academy has received from another body or person, or
- Is held by another body on the Academy's behalf.

Information means both hard copy and digital information, including emails. If the Academy does not hold the information, it does not have to be created or acquired just to answer the enquiry, although a reasonable search should be made before denying that the information exists.



**d. Has the information requested already been made public?**

If the information requested is already in the public domain, the enquirer can and will be directed to the information.

**e. Is the request vexatious or manifestly unreasonable or repeated?**

The FOIA states that there is no obligation to comply with vexatious requests. This is taken to mean a request which is designed to cause inconvenience, harassment, or expense, rather than to obtain information, and would require substantial diversion of resources or would otherwise undermine the work of the Academy.

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

**f. Could a third party's interests be affected by disclosure?**

Consultation of third parties may be required if their interests could be affected by the release of the information, and any such consultation may influence the decision. There is no need to consult where the information is not going to be disclosed because an exemption is being applied.

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 in determining if information is exempt from disclosure, or
- The views of the third party may assist in determining the public interest

**g. Does an exemption apply?**

The presumption of the legislation is that information will be disclosed unless the FOIA provides a specific reason to withhold it. There are more than 20 exemptions. They are set out in Section 3.0 and are mainly intended to protect sensitive or confidential information.

Only where there are real concerns about disclosing the information should referral be carried out to see whether an exemption might apply. Even then, where the

potential exemption is a qualified exemption, the public interest test (the public interest in applying the exemption outweighs the public interest in disclosing it) needs considering. Unless it is in the public interest to withhold the information, it will be released. Section 4.0 contains guidance on conducting a public interest test.

**h. What if the request is for personal information about the applicant?**

Personal information requested by the subject of that information is exempt under the FOIA as such information is covered by the Data Protection Act. Individuals must make a “subject access request” under the Data Protection Act if they wish to access information about themselves. Please refer to the Academies Data Protection Policy.

**i. What if the details contain personal information about third parties?**

Personal information requested about third parties is also exempt under the FOIA where release of that information would breach the Data Protection Act. If a request is made for a document 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.

The procedure for redaction, or blocking out information, is to mask the passages which are not to be disclosed and then photocopy the document. Annotate in the margin against each blank passage the exemption and section of the FOIA under which the passage is exempt. Explain in the covering letter that the relevant exemptions are marked in the attachments and in the case of non-absolute exemptions, how the public interest test has been considered.

Under no circumstances should the document be rewritten, so that the resulting document appears as though it does not contain the exempted passage.

**j. How much can be charged?**

The FOIA allows Academies to charge for providing information. Details can be found in Section 5.0.

The first step is to determine if the threshold (currently £450) would be exceeded. Staff costs should be calculated at £25 per hour, regardless of which staff member would be undertaking the work. The time it takes to determine if the information is held, the time to locate and retrieve the information or extract the information from other documents can be taken into account. The costs involved in determining whether the information is exempt cannot be taken into account.

If a request would cost less than the appropriate limit in force at the time of the request, the Academy can only charge for the cost of informing the applicant whether the information is held, and communicating the information to the applicant. This may include photocopying, printing and postage.

If a request would cost more than the appropriate limit in force at the time of the request, the Academy can turn the request down, answer and charge a fee, or answer and waive the fee. If the Academy decides to charge a fee, it can charge on the basis of the costs outlined in Section 5.0.

Academies will wish to consider whether calculating the cost of the fee outweighs the cost of providing the information. For relatively straight forward requests, the Academy will consider responding free of charge.

If the Academy makes the decision to charge, the enquirer will be sent a fees notice and the Academy does not have to comply with the request until the fee has been paid. Section 5.0 gives more information on charging.

**k. Is there a time limit for replying to the enquirer?**

Compliance with a request must be prompt and within the prescribed limit of 20 working days of the date of receipt of the request, excluding Academy holidays, or 60 working days following receipt, whichever is later. Failure to comply may result in a complaint to the Information Commissioner. The response time starts from the time the request is received. Where the enquirer has been asked for more information to enable the Academy to respond, the time limit starts to run when this further information has been received.

If a qualified exemption applies and more time is needed to consider the public interest test, a reply will be sent within the requisite time limit 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 – in practice and where possible, this will usually be within 10 working days.

Where the enquirer has been notified that a charge is to be made, the time period stops until payment is received and then resumes once payment has been received.

**l. What action is required to refuse a request?**

If the information is not to be provided, the person dealing with the request must immediately contact the person in the Academy with delegated responsibility for FOI (Chief Finance & Operations Officer) to ensure that the case has been properly

considered and the reasons for refusal are sound. If it is decided to refuse a request, a refusal notice will be sent, which must contain:

1. The fact that the responsible person cannot provide the information asked for;
2. Which exemption applies;
3. Why the exemption applies to this enquiry if it is not self-evident;
4. The reasons for refusal if based on cost of compliance (see Section 5);
5. In the case of non-absolute exemptions, how the public interest test has been applied, specifying the public interest factors taken into account before reaching the decision (see Section 4.0);
6. Reasons for refusal on vexatious or repeated grounds;
7. Details of the internal 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. Records are to be retained for five years. There are no requirements to keep records where the information requested has been supplied.

**m. What do we do if someone asks a follow up question?**

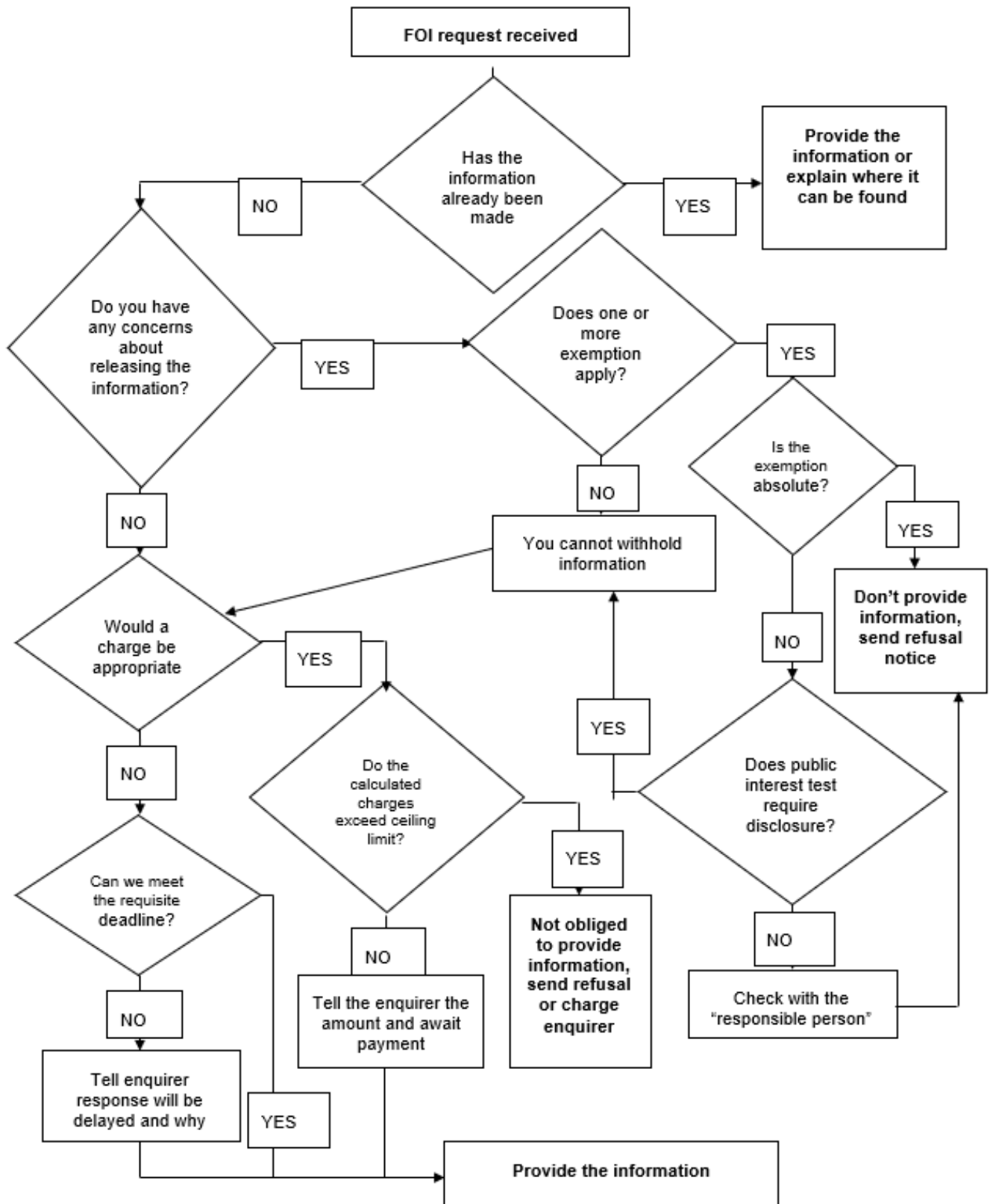
If an applicant requests a follow up question this is treated as a new request.

**n. What do we do if someone complains?**

Any written (including email) expression of dissatisfaction – even if it does not specifically seek a review – should be handled through the Academy’s existing complaints procedure. Wherever practicable the review should be handled by someone not involved in the original decision. The Academy will set a target time for determining complaints and publish information on the success rate in meeting the target time. The Academy will maintain records of all complaints and their outcomes.

When the original request has been reviewed and the outcome is that the information should be disclosed this should be done as soon as practicable. When the outcome is that procedures within the Academy have not been properly followed, the Academy will review procedures to prevent any recurrence. When the outcome upholds the Academy’s original decision or action, the applicant will be informed of their right to appeal to the Information Commissioner. The appeal should be made in writing to:

2.1 PROCESS FLOW FOR DEALING WITH REQUESTS



### 3.0 Exemptions

Although decisions on disclosure should be made on a presumption of openness, the FOIA recognises the need to preserve confidentiality and protect sensitive material in some circumstances.

Information in response to a valid request will not be withheld unless one of the following applies:

- An exemption to disclose, or
- The information sought is not held, or
- The request is considered vexatious or repeated, or
- The cost of compliance exceeds the threshold (see Section 5.0)

#### a. The duty to confirm or deny

A person applying for information has the right to be told if the information requested is held by the Academy, and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known as the Academy's "duty to confirm or deny" that it holds the information. However, the Academy 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.

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 are not normally relevant to the Academies. There are more than 20 exemptions but the Academies are likely to use only a few of them.

There are two general categories of exemptions:

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

#### b. What are the Absolute Exemptions?

There are 8 absolute exemptions listed in the Act. Even where an absolute exemption applies:

- It does not mean that the information cannot be disclosed in all cases; it means that disclosure is not required by the FOIA. A decision could be taken to ignore

the exemption and release the information taking into account all the facts of the case.

- There is still a legal obligation to provide reasonable advice and assistance to the enquirer.

The absolute exemptions in the FOIA are set out below. Those which might be relevant to the Academies are marked with an \*:

- i. Information accessible to the enquirer by other means\* (section 21) – If information is reasonably accessible to the applicant by another route than the Act, it is exempt information. This is the case even if the enquirer would have to pay for the information under the alternative route. This exemption includes cases where you are required to give information under other legislation, or where the information is available via the Publication Scheme.
- ii. Information dealing with security matters (section 23) – This applies to information directly or indirectly supplied by, or relating to, bodies dealing with security matters such as MI5, MI6, Special Forces, etc.
- iii. Court records (section 32) – This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.
- iv. Parliamentary Privilege (section 34) – This exempts information if it is required for the purpose of avoiding an infringement of the Parliamentary privilege.
- v. Prejudice to the effective conduct of public affairs (section 36) – This relates to the maintenance of the collective responsibility of Ministers.
- vi. Personal information\* (section 40) – Where the enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act.
- vii. Information provided in confidence\* (section 41) – This relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person.
- viii. Prohibitions on disclosure\* (section 44) – Information is exempt where its disclosure is prohibited under any other legislation by order of a court or where it would constitute a contempt of court or where it is incompatible with any EC obligation.

### c. What are the Qualified Exemptions?

With qualified exemptions, even if it is decided that an exemption applies, there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing the information. Guidance on carrying out the public interest test can be found in Section 4.0.

The qualified exemptions in the Act are set out below. Those which might be relevant to the Academies are marked with an \*:

- i. Information intended for future publication\* (section 22) – If, at the time the request was made, information is held with a view to publication, then it is exempt from disclosure if it is reasonable that it should not be disclosed until the intended publication date. This could apply to statistics published at set intervals, statutory accounts, and similar information.
- ii. Information is intended for continued programmes of research for future publication (section 22A) - If, at the time the request was made, information is held with a view to being used for continuing programmes of research intended for publication and where disclosure would, or would be likely to prejudice a matter listed, then it is exempt from disclosure.
- iii. National security (section 24) – Information is exempt for the purposes of safeguarding national security.
- iv. Defence (section 26) – Information is exempt if its disclosure would prejudice the defence of the UK.
- v. International relations (section 27) – Information is exempt if its disclosure would, or would be likely to, prejudice relation between the UK and any other state.
- vi. Relations between Westminster and devolved authorities (section 28) - Information is exempt if its disclosure would, or would be likely to, prejudice relations between Westminster and devolved authorities.
- vii. The economy (section 29) – Information is exempt if its disclosure would, or would be likely to, prejudice the economic or government’s financial interests of the UK.
- viii. Investigations and proceedings conducted by public authorities\* (section 30) – Information is exempt if it has at any time been held by the Academy for the purposes of criminal investigations or proceedings as to improper or illegal conduct, fitness or competence, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.
- ix. Law enforcement\* (section 31) – Information which is not exempt under Section 30 may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice law enforcement activities, including those relating to tax collection and immigration controls and the following, among others,:
  - The prevention or detection of crime
  - The apprehension or prosecution of offenders
  - The administration of justice
  - The exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, whether circumstances justify regulatory action, ascertaining a person’s fitness or competence in relation to their profession, ascertaining the cause of an accident or protecting or recovering charities or its properties.
  - Any civil proceedings brought by or on behalf of the Academy which arise out of an investigation carried out for any of the purposes mentioned above.



The duty to confirm or deny does not arise where prejudice would result to any of these matters.

- x. Audit functions (section 33) – Information is exempt if disclosure would, or would be likely to, prejudice the exercise of an authority’s functions in relation to the audit of the accounts of other public authorities. It does not apply to internal audit reports.
  - xi. Formulation of government policy (section 35) – Information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (e.g. Attorney General) and the operation of any Ministerial private office.
  - xii. Prejudice to the conduct of public affairs (section 36) – Information likely to prejudice the maintenance of the convention of the collective responsibility of Ministers or likely to inhibit the free and frank provision of advice or exchange of views.
  - xiii. Communications with the Royal Family and the granting of honours (section 37) – Information is exempt if it relates to communications with the Royal Family or Royal Household or if it relates to the granting of honours. The duty to confirm or deny does not arise where this exemption applies.
  - xiv. Health and Safety\* (section 38) – Information is exempt if its disclosure would or would be likely to endanger the safety or the physical or the mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.
  - xv. Environmental information\* (section 39) – Information is exempt under FOI when it is covered by the Environmental Information Regulations.
  - xvi. Personal information\* (section 40) – Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act, or the data protection principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data Protection Act. The duty to confirm or deny does not arise in relations to this information if doing so would be incompatible with any of the above.
  - xvii. Legal professional privilege\* (section 42) – Legal professional privilege covers any advice given by legal advisers, solicitors or barristers. Generally such information will be privileged. If the Academy wishes to disclose the information, consent from the provider of the advice is required. This exemption covers all such information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.
- Commercial interests\* (section 43) – Information is exempt if it constitutes a trade secret or would be likely to prejudice the commercial interests of any person or body, including the Academies. The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret.

#### **d. Protective Markings and Applying Exemptions**

When considering if an exemption to disclosure should apply, the presence of a protective marking (Restricted, Confidential or Secret) does not constitute an exemption and is not, in itself, sufficient grounds on which to prevent disclosure. Each case must be considered on its merits.

**e. Timing**

Where information has previously been withheld, it must not be assumed that any subsequent requests for the same information will also be refused. Sensitivity of information decreases with age and the impact of any disclosure will be different depending on when the request is received. Therefore, for each request, the harm that could result at the time of the request will be considered and, while taking into account any previous exemption applications, each case should be considered separately.

**f. Next steps**

In all cases, before writing to the enquirer, the person given responsibility for FOI will need to ensure that the case has been properly considered, and that the reasons for refusal, or public interest test refusal, are sound. To help ensure this, every case of refusal will be reviewed by the Headteacher of the Academy.

**4.0 Applying the Public Interest Test**

Having established that a qualified exemption definitely applies to a particular case, a public interest test must be carried out to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. Therefore, unless it is in the public interest to withhold the information, it has to be released. Although precedent and a case law will play a part, individual circumstances will vary and each case will need to be considered on its own merits.

**a. Carrying out the test**

It is worth noting that what is in the public interest is not necessarily the same as that which may be of interest to the public. It may be irrelevant that a matter may be the subject of public curiosity.

In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one.

Applying such a test depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in the Academy and possibly wider. Factors that might be taken into account when weighing the public interest include:

For Disclosure	Against Disclosure
Is disclosure likely to increase access to information held by the Academy?	Is disclosure likely to distort public reporting or be misleading because it is incomplete?
Is disclosure likely to give the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions?	Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving?
Is disclosure likely to improve the accountability and transparency of the Academy in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm or confusion?
Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy?	Is disclosure likely to seriously jeopardise the Academy's legal or contractual position?
Is disclosure likely to increase public participation in decision making?	Is disclosure likely to infringe upon other legislation e.g. Data Protection Act?
Is disclosure likely to increase public participation in the political processes in general?	Is disclosure likely to create a controversial precedent on the release of information or impair our ability to obtain information in the future?
Is disclosure likely to bring to light information affecting public safety?	Is disclosure likely to adversely affect the Academy's proper functioning and discourage openness in expressing opinions?
Is disclosure likely to reduce further enquiries on the topic?	If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose?

Note also that:

- Potential or actual embarrassment to, or loss of confidence in, the Academy, staff, or governors is NOT a valid factor to consider.
- The fact that the information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information.

- The potential harm of releasing information will reduce over time and should be considered at the time the request is made rather than by reference to when the relevant decision was originally taken.
- The balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but on certain higher order considerations such as the need to preserve confidentiality of internal discussions.
- A decision not to release information may be perverse, i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party.

The Academy will record the answers to these questions and the reasons for these answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. We will decide how important each factor is in the circumstances to make an overall assessment. This assessment will be reviewed by the Headteacher or the CEO. If the reviewer disagrees with the assessment, it will be referred to another reviewer.

#### **b. Decision for disclosure**

Where the balance of the public interest lies in disclosure, the enquiry will be dealt with and the information required will be made available.

#### **c. Decision against disclosure**

After carrying out the public interest test if it is decided that the exemption should still apply, the request will be responded to with the appropriate reply under the circumstances.

There will be occasions when it has been decided that a qualified exemption applies but consideration of the public interest test may take longer. In such a case, the enquirer will be contacted within the requisite time period stating that a particular exemption applies, but included will be an estimate of the date by which a decision on the public interest test will be made. This will be within a reasonable time, normally no more than 10 working days beyond the usual requisite period.

### **5.0 Charging**

\*\*Different charges apply for requests under the Data Protection Act.

#### **a. Can a fee be charged?**

FOI does not require charges to be made but there is discretion to charge applicants a fee in accordance with the Fees Regulations, available on the FOI Fee website (search Freedom of Information fees guidance.)

**b. What steps will be taken in considering whether to charge a fee?**

Step 1 – Is the information exempt for the purposes of the FOI Act? – If the information is exempt, then fees do not apply. The Academy would contact the enquirer to inform them that the information is exempt. There will be no charge.

Step 2 – Does the Academy wish to calculate whether the cost of the request would exceed the appropriate limit (currently £450)? – In many cases, it will be obvious that the request would cost less than the appropriate limit, so there is no need to make the calculation.

Step 3 – The appropriate limit will be calculated. Staff costs are calculated at £25 per hour, regardless of which member of staff gathers the information. When calculating whether the limit is exceeded, the costs of determining whether the information is held, where it is held, retrieving the information and extracting the information from other documents will be taken into account. As per the guidelines, the costs involved with considering whether information is exempt under the Act will not be included.

Step 4 – Does the request cost less than the limit? – If a request costs less than the limit, as per the guidelines, the only charge will be 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).

Step 5 – Does the request exceed the limit? – If a request would cost more than the limit, the request can be turned down, answered and charged a fee, or answer and waive the fee. If the Academy chooses to comply with a request where the estimated cost exceeds the threshold the charges will be calculated as per step 3, plus the costs from step 4.

Step 6 – For all requests, the Academy will have regard to the following points:

- The duty to provide advice and assistance to applicants. If the plan is to turn down a request for cost reasons the applicant will be contacted in advance to discuss whether they would prefer the scope of the request to be modified so that it would cost less than the appropriate limit, or;
- If the plan is to suggest charging the applicant a high fee, the applicant will be contacted in advance to discuss the amount of the charge and whether they

would prefer the scope of the request to be modified so that it would cost less than the appropriate limit.

- Maximum amount that can be charged. The Regulations set out the maximum amount that can be charged. They do not set out a minimum charge nor prevent the Academy from charging no fee. For simple and straightforward requests, the fee will be waived.

**c. May the costs be aggregated where there are multiple requests?**

Where two or more requests are made to the Academy by different people who appear to be acting together or as part of a campaign, the estimated costs of complying with any of the requests is to be taken to be the estimated total cost of complying with them all, provided that:

- a. The two or more requests referred to in that section are for information which is on the same subject matter or is otherwise related;
- b. The last of the requests is received by the Academy by the twentieth working day following the date of receipt of the first of the requests, and
- c. It appears to the Academy that the requests have been made in an attempt to ensure that the prescribed costs of complying separately with each request would not exceed the appropriate limit.

If multiple requests are received for the same information, the Academy may decide to include it in published information.

**d. How will the applicant be informed of the fee?**

Where the intention is to charge a fee for complying with a request for information, then the person requesting the information will be given notice in writing (the “fees notice”) stating that a fee of the amount specified in the notice is to be charged for complying. The format of the notice can be found in Section 6.0.

Proof of delivery of a fees notice is required, either signed for in the post or emailed with a return receipt request. Where a fees notice has been given to the person making a request, the request will not be complied with unless the fee is paid within three months of the notice being received.

## 6.0 Standard Letters

- Letter One - to inform the enquirer the Academy does not hold the requested information.
- Letter Two - to inform the enquirer the request is being transferred to another public body.
- Letter Three - to seek clarification of a request.
- Letter Four - to inform the enquirer that the information they want is available via The Academy's published information.
- Letter Five - to inform the enquirer that the information they want is already publicly available.

## LETTER ONE

{Academy Name}  
{Academy Address}

{Applicant Name}  
{Applicant Address}

{Date}

Dear {Name}:

Thank you for your request for information received on \_\_\_\_\_.

We have conducted a thorough search of our records and unfortunately we are unable to locate the information you requested. This may be because the Academy has never held this information or that the information is older than the statutory requirements for retention and has been legally destroyed in accordance with our retention schedule.

If you have any comments relating to how your request has been handled by our Academy or are dissatisfied with the handling of your request and require an internal review, please contact the Chief Finance & Operations Officer, The Basildon Upper Academy, Wickford Avenue, Pitsea, Basildon, Essex, SS13 3HL. Please note that internal review requests must be submitted within two months of the date of receipt of the response to your original letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

{Name}  
{Title}



## LETTER TWO

{Academy Name}  
{Academy Address}

{Applicant Name}  
{Applicant Address}

{Date}

Dear {Name}:

Thank you for your request for information received on \_\_\_\_\_. To the best of our knowledge, the requested information is not held within the Academy. However, we believe that {Name and address of organisation} may hold the information that you require. We will therefore need to transfer the request to them.

If you have an objection to this transfer you should let us know as soon as possible by writing to {Address} or telephoning {Number} and asking for {Name of officer dealing with the request}.

If you have any comments relating to how your request has been handled by our Academy or are dissatisfied with the handling of your request and require an internal review, please contact the Chief Finance & Operations Officer, The Basildon Upper Academy, Wickford Avenue, Pitsea, Basildon, Essex, SS13 3HL. Please note that internal review requests must be submitted within two months of the date of receipt of the response to your original letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

{Name}  
{Title}

## LETTER THREE

{Academy Name}  
{Academy Address}

{Applicant Name}  
{Applicant Address}

{Date}

Dear {Name}:

Thank you for your request for information received on \_\_\_\_\_. From the information described, we have been unable to identify the information you require.

Could you please give us more information relating to: {Include specific information we require, trying to ensure that terms that may be unfamiliar to the requestor are explained}.

The Freedom of Information Act 2000 prescribes the time frame in which we must deal with requests. We are not required to include any time whilst waiting for clarification of a request. We will endeavour to proceed with your request as soon as you supply the information required. If we have not received a reply to this letter within three months, we will treat this request as cancelled.

If you have any comments relating to how your request has been handled by our Academy or are dissatisfied with the handling of your request and require an internal review, please contact the Chief Finance & Operations Officer, The Basildon Upper Academy, Wickford Avenue, Pitsea, Basildon, Essex, SS13 3HL. Please note that internal review requests must be submitted within two months of the date of receipt of the response to your original letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

{Name}  
{Title}

## LETTER FOUR

{Academy Name}  
{Academy Address}

{Applicant Name}  
{Applicant Address}

{Date}

Dear {Name}:

Thank you for your request for information received on \_\_\_\_\_.

We can confirm that we hold this information. However, the information is exempt from disclosure under Section 21 of the Freedom of Information Act 2000. This is because the information is accessible to you, as it is already in the public domain public via our publication scheme, which is available from the Academy or on our website at

\_\_\_\_\_.

If you have any comments relating to how your request has been handled by our Academy or are dissatisfied with the handling of your request and require an internal review, please contact the Chief Finance & Operations Officer, The Basildon Upper Academy, Wickford Avenue, Pitsea, Basildon, Essex, SS13 3HL. Please note that internal review requests must be submitted within two months of the date of receipt of the response to your original letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

{Name}  
{Title}

## LETTER FIVE

{Academy Name}  
{Academy Address}

{Applicant Name}  
{Applicant Address}

{Date}

Dear {Name}:

Thank you for your request for information received on \_\_\_\_\_.

The information which you requested is already publicly available. You can access the information at \_\_\_\_\_. As a result, this information is therefore exempt from disclosure under the Freedom of Information Act 2000.

Please let me know if you do not have access to the internet or require a hard copy of the information, in which case there may be a charge for its provision.

If you have any comments relating to how your request has been handled by our Academy or are dissatisfied with the handling of your request and require an internal review, please contact the Chief Finance & Operations Officer, The Basildon Upper Academy, Wickford Avenue, Pitsea, Basildon, Essex, SS13 3HL. Please note that internal review requests must be submitted within two months of the date of receipt of the response to your original letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

{Name}  
{Title}