

## FREEDOM OF INFORMATION

*This update: December 2018*

*In this document, the words Academy and School are both used. In all cases, the reference is to Katharine Lady Berkeley's School.*

The Freedom of Information Act 2000 (FOI Act) was introduced to promote greater openness and accountability across the public sector, and establishes a general right of access to information held by public authorities, including maintained schools. Along with Human Rights and Data Protection legislation, Freedom of Information aims to build a culture of rights and responsibilities for citizens.

From 1 January 2005, there is a legal right for any person to make a request to a school for access to information held by that school. This right also applies to applications for information from Academies. Academies and maintained schools are under a duty to provide advice and assistance to anyone requesting information. Enquirers do not have to say why they want the information and the request does not have to mention The Freedom of Information Act. The request must be in writing, which includes fax or email. All requests for information that are not covered by the Data Protection Act 1998 (i.e. from individuals to see their own personal information) or Environmental Information Regulations 1992 are covered by FOI Act.

The enquirer is entitled to be told whether the school holds the information (this is known as the duty to confirm or deny) and, if so, to have access to it. Access can include providing extracts of a document or a summary of the information sought, or access to the original document. However, the Act recognises the need to preserve confidentiality of sensitive information in some circumstances and sets out a number of exemptions.

There are only four reasons for not complying with a valid request for information under the FOIA:-

- the information is not held
- the cost threshold is reached (£450 or 18 hours of staff time)
- the request is considered vexatious or repeated
- one or more of the exemptions apply

FOIA provides a series of exemptions. These are explained further in Annex A. Some of the exemptions are absolute and some are qualified, in that they can be overridden by the public interest test. There is more information about these later in this guide.

Many of the exemptions are intended to protect sensitive or confidential information. However, some of the "exemptions" are there simply to avoid the legal position where two pieces of law cover the same information requested, or where the information is already available by some other means.

These include:

- Information accessible by other means For example, information available from the publication scheme, or information that other legislation requires the school to give
- Personal information<sup>1</sup>. A request for personal information belonging to the requestor should be handled under the terms of the Data Protection Act (DPA) 1998 and treated as a "subject access request" (or SAR). A SAR is where the enquirer asks to see what personal information the Academy holds about them.
- Environmental information<sup>2</sup> Where information is covered by the Environmental Information Regulations 1992<sup>3</sup>

Wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence and so the governing body, or any person who is employed by, or is an officer of, or is subject to the direction of the governing body (as the public authority) may be at risk of criminal proceedings where such unlawful concealment, damage or destruction occurs. Therefore it is important that no action is taken to delete or amend records that are subject to a request for information.

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<sup>1</sup> *Guidance on what constitutes personal data is available on the ICO's website.*

<sup>2</sup> *Environmental Information Regulations enquiries are ones which relate to air, water, land, natural sites, built environment, flora and fauna, and health, and any decisions and activities affecting any of these. These could therefore include enquiries about recycling, phone masts, playing fields, car parking etc.*

<sup>3</sup> *Further guidance is available on the ICO's website or DEFRA's website*

## Publication Scheme

The school has adopted the Model Publication Scheme for Schools approved by the Information Commissioner. The Scheme will be available on the school website and on request from the school office. The Scheme will list the materials that it covers and how they may be accessed.

## Dealing With A Request For Information

1. To handle a request for information the governing body or delegated person will need to ask themselves a series of questions as follows:

### Is it a FOI request for information?

2. A request for information may be covered by one, or all, of three information rights:
  - Data Protection enquiries (or subject access requests) are ones where the enquirer asks to see what personal information the school holds about the enquirer.

Both manual and computerised personal information held by Academies is subject to the Data Protection Act (DPA). Under the DPA, anyone who submits a written request to see or have copies of personal data held by the Academy must have this made available to them within 40 calendar days<sup>4</sup>. When Academies receive requests from students for disclosure of educational records under the DPA, they must not disclose any information which may not be disclosed under the DPA.

- Environmental Information Regulations (EIR) enquiries are ones which relate to air, water, land, natural sites, built environment, flora and fauna, and health, and any decisions and activities affecting any of these. These could therefore include enquiries about recycling, phone masts, school playing fields, car parking etc. If the enquiry is about environmental information, follow the guidance on the DEFRA website.
- FOI enquiries are concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the FOI Act. All requests for information that are not data protection or environmental information requests are covered by the FOI Act.

### Is this a valid FOI request for information?

3. An FOI request should:
  - be **in writing**, including email or FAX;
  - **state the enquirer's name and correspondence address** (email addresses are allowed);
  - **describe the information requested** - there must be enough information to be able to identify and locate the information<sup>5</sup>; and
  - not be covered by one of the other pieces of legislation.
4. Verbal enquiries are not covered by the FOI Act. Such enquiries can be dealt with where the enquiry is relatively straightforward and can be dealt with satisfactorily. However, for more complex enquiries, and to avoid disputes over what was asked for, the enquirer should be asked to put the request in writing or email, when the request will become subject to FOI.

### Does the school hold the information?

5. "Holding" information means information relating to the business of the school:
  - the school has **created**, or
  - the school has **received from another** body or person, or

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<sup>4</sup> Subject to relevant ID checks carried out to confirm that the requestor is who they claim they be.

<sup>5</sup> In cases where the enquiry is ambiguous 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 to enable an answer, the request does not have to be dealt with until the further information is received. The response time limit starts from the date this is received.

- **held by another body on the school's behalf.**

6. Information means both hard copy and digital information, including email.
7. If the school does not hold the information, the school does not have to create or acquire it just to answer the enquiry, although a reasonable search should be made before denying that the school has the information that it might be expected to hold.

#### **Has the information requested already been made public?**

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

#### **Is the request vexatious or manifestly unreasonable or repeated?**

9. The Act 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 a substantial diversion of resources or would otherwise undermine the work of the school<sup>6</sup>. This however does not provide an excuse for bad records management.

#### **Can the school transfer a request to another body?**

10. If the information is held by another public authority, such as the local authority, first check with them they hold it, then transfer the request to them. The enquirer must be notified that the school does not hold the information and to whom the request has been transferred. Answers should be provided to any parts of the enquiry in respect of information that the school does hold.

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

11. 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 is not needed where the school is not going to disclose the information because an exemption will be applied.
12. 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 school to determine if information is exempt from disclosure, or
  - the views of the third party may assist the school to determine the public interest.

#### **Does an exemption apply?**

13. The presumption of the legislation is that the information will be disclosed unless the Act provides a specific reason to withhold it. There are more than 20 exemptions. They are set out in Annex A and are mainly intended to protect sensitive or confidential information.
14. Only where there are real concerns about disclosing the information should investigation take place to determine whether an exemption might apply. Even then, where the potential exemption is a qualified exemption, the public interest test needs to 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.

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<sup>6</sup> *It is not intended to include otherwise valid requests in which the applicant may make complaints or vent frustrations. In addition, the school does not have to comply with repeated identical or substantially similar requests from the same applicant unless a "reasonable" interval has elapsed between requests.*

### **What if the request is for personal information?**

15. Personal information requested by the subject of that information is exempt under the FOI Act. However, if the person making the FOI request is the subject of that personal information, they are entitled to have this personal information made available to them under the terms of the Data Protection Act. Therefore, when responding to FOI requests, academies must not withhold personal data if the requestor would be entitled to have this personal information made available to them in response to a SAR made under the DPA.

### **What if the details contain personal information?**

16. Personal information requested by third parties is also exempt under the FOI Act 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.

#### Redacting documents

- (i) mask the passages which are not to be disclosed and photocopy;
- (ii) annotate in the margin against each blank passage, the exemption and section of the Act under which this passage is exempt;
- (iii) 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.
- (iv) if redaction is carried out electronically, ensure that the underlying text cannot be read using any available software. As this may be difficult to ensure, in general, documents should be printed, redacted, and scanned.

On no account must the computer be used to rewrite the document or email and simply delete the exempted passages so that the resulting document appears as though they did not exist. The one circumstance where this would be permissible would be where the only redacted parts are personal information such as people's names and the covering letter explains this.

### **How much can the school charge?**

17. Charges may be made for the cost of complying request as detailed in Annex B. Where the cost is minimal, the charge may be waived as the cost of collecting the charge may be greater than the charge itself.
18. If charge is to be made, a fees notice must be sent to the enquirer and the school does not have to comply with the request until the fee has been paid.

### **Does the estimated cost of complying exceed the appropriate limit?**

19. If the cost to the school of complying with the request will exceed £450, the school is not obliged to comply. If the school does comply with the request, the charge will be calculated as described in Annex B.

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

20. Compliance with a request must be prompt and certainly within the legally prescribed limit of 20 working days, excluding school holidays. Failure to comply could 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 an answer to be provided, the 20 days start time begins when this further information has been received.
21. If a qualified exemption applies and more time is needed to consider the public interest test, a reply should be made within the 20 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 – in practice, it is recommended by the Department that normally this should be within 10 working days.

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

#### **What action is required to refuse a request?**

23. If the information is not to be provided, the person dealing with the request must immediately contact the person in the school with delegated responsibility for FOI 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 refusals notice must be sent, which must contain
- i) the fact that the responsible person cannot provide the information asked for;
  - ii) which exemption(s) claimed to apply;
  - iii) why the exemption(s) apply to this enquiry (if it is not self-evident);
  - iv) reasons for refusal if based on cost of compliance (see paragraph 19 above);
  - v) 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;
  - vi) reasons for refusal on vexatious or repeated grounds
  - vii) the internal complaints procedure.
24. 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 should be retained for 5 years. There are no requirements to keep records where the information requested has been supplied.

#### **What do I do if someone complains?**

25. Any written (including email) expression of dissatisfaction - even if it does not specifically seek a review – should be handled through the school's existing complaints procedure which should be fair and impartial. The procedure should be clear and non bureaucratic. 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 school should maintain records of all complaints and their outcome.
26. 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 school have not been properly followed, the school should review procedures to prevent any recurrence. When the outcome upholds the school's original decision or action, the applicant should be informed of their right to appeal to the Information Commissioner. The appeal should be made in writing to:
- The Case Reception Unit
  - Customer Service Team
  - Information Commissioner's Office
  - Wycliffe House
  - Water Lane
  - Wilmslow
  - Cheshire
  - SK9 5AF

## Annex A – Exemptions to Release of Information

*The contents of this section are taken from the DfES (DfE) Guide for Maintained School on Full Implementation effective from January 2005. Since that date, it has been confirmed that Academies also have to comply in the same way with the FoI regulations.*

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

2. Information cannot be withheld in response to a valid request UNLESS one of the following applies:-

- an exemption to disclosure, or
- the information sought is not held, or
- the request is considered vexatious or repeated or
- the cost of compliance exceeds the threshold (see Annex B)

### The duty to confirm or deny

3. A person applying for information has the right to be told if the information requested is held by the school, and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known as the school's "duty to confirm or deny" that it holds the information. However, the school does not have to confirm or deny if:-

- the exemption is an absolute exemption (see paragraph 6), or
- in the case of qualified exemptions (see paragraph 8), confirming or denying would itself disclose exempted information

### Exemptions

4. A series of exemptions are set out in the Act which allow the withholding of information in relation to an enquiry. Some are very specialised in their application (such as national security) and would not usually be relevant to schools. There are more than 20 exemptions but schools are likely to use only a few of them.

5. 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; and

**Qualified:** where, even if an exemption applies, there is a duty to consider the public interest in disclosing information

### What are the Absolute Exemptions?

6. There are 8 absolute exemptions listed in the Act of which 4 are unlikely to apply in the school context. Even where an absolute exemption applies:-

- it does not mean that the school can't disclose in all cases; it means that disclosure is not required by the Act. 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

7. The absolute exemptions which may be relevant to schools in the Act are set out below.

#### 7.1 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 that alternative route. This exemption includes cases where the school is required to give information under other legislation, or where the information is available via the Publication Scheme.

**7.2 Personal information** (Section 40) - see also the qualified exemption part of Section 40. Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act. Consult the existing school Data Protection guidance.

**7.3 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.

**7.4 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.

**What are the Qualified Exemptions?**

8. 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 information.

**8.1 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 date of publication. This could apply for instance to statistics published at set intervals, for example annually or where information is incomplete and it would be inappropriate to publish prematurely<sup>7</sup>. Remember, there is still a legal duty to provide reasonable advice and assistance.

**8.2 Investigations and proceedings conducted by public authorities** (Section 30)

Information is exempt if it has at any time been held by the school for the purposes of criminal investigations or proceedings, 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.

**8.3 Law enforcement** (Section 31)

Information which is not exempt under Section 30 Investigations and Proceedings, may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice 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 school 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.

**8.4 Prejudice to the conduct of Public Affairs** (Section 36 – excluding matters covered by the absolute exemption part of section 36)

Information likely to prejudice the maintenance of the convention of the collective responsibility of Ministers of likely to inhibit the free and frank provision of advice or exchange of views.

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<sup>7</sup> Note the following:-

- the intended publication does not have to be by the school, it can be by another person or body on behalf of the school
- the date of publication does not have to be known, it could be at some future date (although it is recommended that some idea of a likely date is given)
- the duty to confirm or deny does not apply if to do so would involve the disclosure of any of the relevant information

### **8.5 Communications with the Queen (Section 37)**

Information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

### **8.6 Health and Safety (Section 38)**

Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

### **8.7 Environmental information (Section 39)**

Information is exempt under FOI where it is covered by the Environmental Information Regulations. Environmental information can cover information relating to: air, water, land, natural sites, built environment, flora and fauna, and health. It also covers all information relating to decisions or activities affecting any of these.

**8.8 Personal information (Section 40)** – see also the absolute exemption part of Section 40 Where an individual seeks information about themselves Data Protection Act powers apply.

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 relation to this information if doing so would be incompatible with any of the above.

### **8.9 Legal professional privilege (Section 42)**

Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally such information will be privileged. A school wishing to disclose the information will need to seek consent from the provider of the advice. 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.

### **8.10 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 school). 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.

## **Protective Markings, Confidentiality and Applying Exemptions**

9. When considering if an exemption to disclosure should apply, bear in mind that the presence of a protective marking (Restricted, Confidential or Secret, with or without descriptors such as Staff, Management, Commercial etc) 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.

### **Timing**

10. 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, it will be necessary to consider the harm that could result at the time of the request and, while taking into account any previous exemption applications, each case should be considered separately.

### **Responding to the Enquirer**

11. In all cases, before writing to the enquirer, the person given responsibility for Freedom of Information requests by the Academy Trust will need to ensure that the case has been properly considered and that the reasons for refusal, or public interest refusal test, are sound.

## **Annex B - Charging**

Freedom of Information does not require charges to be made but Academies have discretion to charge applicants a fee in accordance with the Fees Regulations. Consideration should be given as to whether the cost of calculating the charge outweighs the cost of providing the information. In many cases, the school will respond to straightforward enquiries free of charge and only charge where it is clear that the costs will be significant.

### **Costs that may be taken into account**

The following can be taken into account when calculating the estimated cost of complying with a request for information:

- a) *the prescribed costs:*  
these are any costs reasonably incurred by the Academy:
- in determining whether information is held of the description specified in the request
  - in locating and retrieving the information and in meeting the applicant's preference for communicating the information
  - the cost of associated staff time. But it does not include the cost of staff time incurred in determining whether the Academy is obliged to comply with the request for information. Staff costs should be calculated at the rate of £25 per hour. This represents 18 hours of staff time. This does not include time taken to redact or consider reasons for withholding information. If it is likely that the 18 hour threshold will be met, all individuals carrying out searches for information must record how long they take to do so and what tasks are involved. This will be necessary to provide the evidence that the 18 hours threshold has been met.
- b) *the disbursements*  
these are any costs directly and reasonably incurred by the Academy in:
- informing the applicant whether the information of the description specified in the request is held
  - communicating the information to the applicant

### **Limits to the fee that can be charged**

If it is decided to charge a fee for complying with a request for information, it must not be more than the sum of the prescribed costs and the disbursements.

### **If the estimated costs exceed the threshold of £450**

If the estimated cost of complying exceeds the threshold the Academy is not required to comply with the request but may choose to do so. If the Academy chooses to comply with a request where the estimated cost exceeds the threshold, the charge as follows should be calculated as follows

- 10% of the prescribed cost for the first £450
- the prescribed costs over £450

### **Aggregating costs 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 cost of complying with any of the requests is to be taken to be the estimated total cost of complying with them all, provided that:

- the two or more requests referred to in that section are for information which is on the same subject matter or is otherwise related;
- the last of the requests is received by the Academy before the twentieth working day following the date of receipt of the first of the requests; and
- 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.

### **How is the applicant informed of the fee?**

Where a fee is to be charged for complying with a request for information then the Academy must give the person requesting the information notice in writing (the "fees notice") stating that a fee of the amount specified in the notice is to be charged for complying.

Where a fees notice has been given to the person making the request, the request does not need to be met until the fee has been paid which must be within three months of the notice being received.

## Annex C - Applying the Public Interest Test

### Background

Having established that a qualified exemption(s) 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 developed case law will play a part, individual circumstances will vary and each case will need to be considered on its own merits.

### 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 on the school and possibly wider. Factors that might be taken into account when weighing the public interest include:-

<b>For Disclosure</b>	<b>Against Disclosure</b>
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 school's legal or contractual position?
Is disclosure likely to increase public participation in decision-making?	Is disclosure likely to infringe other legislation e.g. Data Protection Act?
Is disclosure likely to increase public participation in political processes in general?	Is disclosure likely to create a controversial precedent on the release of information or impair the school's 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 school'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 school, staff or governors is NOT a valid factor
- 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 answers to these questions and the reasons for those answers will need to be recorded. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. A decision will have to be made about the importance of each factor in the circumstances leading to an overall assessment.

#### **For Disclosure**

Where the balance of the public interest lies in disclosure, the enquiry should be dealt with and the information required should be made available. Where the factors are equally-balanced, the decision should usually favour disclosure (but see 3rd bullet point above).

#### **Against Disclosure**

After carrying out the public interest test if it is decided that the exemption should still apply, proceed to reply to the request.

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 must be contacted within 20 working days stating that a particular exemption applies, but including 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, it is recommended this decision is made and communicated within the 20 days but where not possible it is suggested that no more than 10 working days beyond the 20 days should be allowed.

In the case of Academies, the ‘Qualified Person’ for section 36 - prejudice to effective conduct of public affairs - would be the Chair of the Board of Directors of the Academy who, in the case of Katharine Lady Berkeley’s School, is the Chair of the Governing Body.

*Approved by the Full Governing Body: 5 December 2018*