



Enable Trust

Freedom of Information (FOI) Policy

Our Vision

Achieving More Together

Our Mission

Working together passionately to achieve the best outcomes for our SEND children and young people

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Version Control

Version No.	Amendments	Date
1.0	Adoption of SchoolPro model policy	Nov'23

1 Introduction

Enable Trust is committed to the Freedom of Information Act 2000 and to the principles of accountability and the general right of access to information, subject to legal exemptions. This policy outlines our response to the Act and a framework for managing requests. The School will make every effort to meet its obligations under the respective legislation and will regularly review procedures to ensure that it is doing so.

The underlying principle of this policy is that the public have a right to access to recorded information held by the Trust and our schools and that the Trust should seek to promote an open regime regarding access to information, subject to the exemptions contained within the relevant legislation.

2 Background

The Freedom of Information Act 2000 (FOI) came fully into force on the 1st January 2005. Under the Act, any person has a legal right to ask for access to information held by the school. They are entitled to be told whether the trust/school holds the information, and to receive a copy, subject to certain exemptions.

The information which the trust/school routinely makes available to the public is included in the Publication Scheme. Requests for other information should be dealt with in accordance with the statutory guidance. While the Act assumes openness, it recognises that certain information is sensitive. There are exemptions to protect this information.

The Act is fully retrospective, so that any past records which the school holds are covered by the Act. The DfE has issued a Retention Schedule produced by the Records Management Society of Great Britain, to guide schools on how long they should keep school records. It is an offence to wilfully conceal, damage or destroy information in order to avoid responding to an enquiry, so it is important that no records that are the subject of an enquiry are amended or destroyed.

Requests under FOI can be addressed to anyone in the school; so all staff need to be aware of the process for dealing with requests – see point 10. Requests must be made in writing, (including email), and should include the enquirers name and correspondence address, and state what information they require. They do 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 no need to collect data in specific response to an FOI enquiry. There is a time limit of 20 working days excluding school holidays for responding to the request.

3 Scope

The FOI Act joins the Data Protection Act (2018) and the Environmental Information Regulations (EIR) (2004) as legislation under which anyone is entitled to request information from the school.

This policy applies to all recorded information held by the Trust and its Schools that relates to the business of the Trust/School. This includes:

- Information created and held by the Trust/School
- Information created by the Trust/School and held by another organisation on our behalf
- Information held by the Trust/School provided by third parties, where this relates to a function or business of the Trust/School (such as contractual information) and
- Information held by the Trust/School relating to Trustees/Governors where the information relates to the functions or business of the Trust/School

Requests for personal data are still covered by the Data Protection Act (DPA). Individuals can request to see what information the trust/school holds about them. This is known as a Subject Access Request and must be dealt with accordingly.

Requests for information about anything relating to the environment – such as air, water, land, the natural world or the built environment and any factor or measure affecting these – are covered by the Environmental Information Regulations (EIR). They also cover issues relating to Health and Safety. For example, queries about chemicals used in the schools or on school land, phone masts, car parks etc., would all be covered by the EIR. Requests under EIR are dealt with in the same way as those under FOI, but unlike FOI requests, they do not need to be written and can be verbal.

If any element of a request to the trust or schools includes personal or environmental information, these elements must be dealt with under DPA or EIR. Any other information is a request under FOI, and must be dealt with accordingly

4 Obligations and Duties

Enable Trust recognises its duty to:

- provide advice and assistance to anyone requesting information. We will respond to straightforward verbal requests for information and will help enquirers to put more complex verbal requests into writing so that they can be handled under the Act.
- tell enquirers whether or not we hold the information they are requesting (the duty to confirm or deny) and provide access to the information we hold in accordance with the procedures laid down in Appendix 1.

5 Publication Scheme

Enable Trust has adopted the Model Publication Scheme for Schools approved by the Information Commissioner.

The Publication Scheme and the materials it covers is available from the Office Managers or Hub Operations and Business Manager (HOBM). It is also published on the trust website.

6 Dealing With Requests

We will respond to all requests in accordance with the procedures laid down in Appendix 1. We will ensure that all staff are aware of the procedures.

7 Exemptions

Certain information is subject to exemption. There are several different exemptions which are detailed in Schedules 2-4 of the DPA 2018. They add to and complement a number of exceptions already built in to certain UK GDPR provisions. The Trust's DPO will be contacted for further advice regarding exemptions.

Unless it is in the public interest to withhold information, it has to be released. We will consult with our DPO to apply the Public Interest Test before any qualified exemptions are applied.

8 Charging

The three information regimes contain different provisions that permit charges to be made for responding to information requests. The Trust may charge a fee for complying with requests, as calculated in accordance with FOI regulations. If a charge is to be made, the Trust will give written notice to the applicant before supplying the information requested.

The Trust will only charge for the cost of copying and transmitting information, not for time taken in reaching decisions regarding whether information is covered by an exemption.

Where the Trust estimates that the cost of locating the information will exceed the statutory threshold of £450, it will consider whether or not to comply with the request. The Trust is not obliged to comply with such a request but may choose to do so.

9 Responsibilities

The Board of Trustees has delegated the day-to-day responsibility for compliance with the FOI to the Director of Finance and Operations (DFO).

Freedom of Information enquiries should be sent in writing to the info@enabletrust.org.uk or DPO@schoolpro.uk

All FOI requests which come into the school must be reported to the DFO who, along with the HOBM, will be responsible for evaluating and co-ordinating the response.

10 Complaints

Any comments or complaints will be dealt with through the school's normal complaints procedure.

We will aim to determine all complaints within 10 working days of receipt. We will publish information on our success rate in meeting this target. The school will maintain records of all complaints and their outcome.

If on investigation the school's original decision is upheld, then the school has a duty to inform the complainant of their right to appeal to the Information Commissioner's office.

Appeals should be to the Information Commissioner's office. They can be contacted at: <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>

Appendix 1: Procedure for Dealing with Requests

To handle a request for information the DFO and HOBM will need to ask themselves a series of questions. These are set out below and shown on the following pages as process maps.

1) Is it a FOI request for information?

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

- a. Data Protection enquiries (or subject access requests) are ones where the enquirer asks to see what personal information the school holds about the enquirer. If the enquiry is a Data Protection request, we will follow our existing school DPA guidance.
- b. 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, school playing fields, car parking etc. If the enquiry is about environmental information, we will follow the guidance on the IC's website or the DEFRA website.
- c. 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.

2) Is this a valid FOI request for information?

An FOI request should:

- a. be **in writing**, including email;
- b. **state the enquirer's name and correspondence address** (email addresses are allowed);
- c. **describe the information requested** – there must be enough information to be able to identify and locate the information¹; and
- d. not be covered by one of the other pieces of legislation.

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, we will ask the enquirer to put the request in writing or email, when the request will become subject to FOI.

¹ In cases where the enquiry is ambiguous, we will assist the enquirer to describe more clearly the information requested. Where possible, we will 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 we notify the enquirer that we need further information to enable us to answer, we do not have to deal with the request until the further information is received. The response time limit starts from the date this is received.

3) Does the school hold the information?

“Holding” information means information relating to the business of the school or trust:

- a. the school/trust has created, or
- b. the school/trust has received from another body or person, or
- c. held by another body on the school or trust’s behalf.

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

If the school/trust does not hold the information, we do not have to create or acquire it just to answer the enquiry, although a reasonable search should be made before denying that we have got information the school might be expected to hold.

4) Has the information requested already been made public?

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

5) Is the request vexatious or manifestly unreasonable or repeated?

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 or trust². This, however, does not provide an excuse for bad records management.

6) Can the school transfer a request to another body?

If the information is held by another public authority, such as our local authority, we will first check with them that they hold it, then transfer the request to them. We must notify the enquirer that we do not hold the information and to whom we have transferred the request. We will answer any parts of the enquiry in respect of information our school does hold.

² It is not intended to include otherwise valid requests in which the applicant may make complaints or vent frustrations. In addition, we do not have to comply with repeated identical or substantially similar requests from the same applicant unless a “reasonable” interval has elapsed between requests.

7) Could a third party's interests be affected by disclosure?

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. We do not need to consult where we are not going to disclose the information because we will be applying an exemption*.

Consultation will be necessary where:

- a. 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;
- b. the views of the third party may assist us to determine if information is exempt from disclosure, or
- c. the views of the third party may assist us to determine the public interest.

8) Does an exemption *apply?

The presumption of the legislation is that we will disclose information unless the Act provides a specific reason to withhold it. The DPO should be contacted for advice as to whether an exemption applies to a request.

9) What if the request is for personal information?

Personal information requested by the subject of that information is exempt under the FOI Act as such information is covered by the Data Protection Act. Individuals must, therefore, continue to make a 'subject access request' under the Data Protection Act if they wish to access such information.

10) What if the details contain personal information?

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. The procedure for redaction is here³.

³ The procedure for redaction is:

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.

On no account must we use a computer 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

11) How much can we charge?

- a. The Act allows governing bodies to charge for providing information.
- b. The first step is to determine if the threshold (currently £450) would be exceeded. Staff costs should be calculated at £25 per hour. We can take account of the costs of determining if the information is held, locating and retrieving the information, and extracting the information from other documents. We cannot take into account the costs involved in determining whether information is exempt.
- c. If a request would cost less than the appropriate limit, (currently £450) we 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).
- d. If a request would cost more than the appropriate limit, (£450) we can turn the request down, answer and charge a fee, or answer and waive the fee. The ICO website and DPO should be consulted for further information.
- e. We may wish to consider whether calculating the cost of the fee outweighs the cost of providing the information. In practice, we will aim to respond to straightforward enquiries free of charge and charge where the costs are significant.
- f. If we are going to charge, we must send the enquirer a fees notice and do not have to comply with the request until the fee has been paid.
- g. Is there a time limit for replying to the enquirer?

Compliance with a request must be prompt and certainly within the legally prescribed limit of 20 working days, excluding school holidays⁴. Failure to comply could result in a complaint to the Information Commissioner. The response time starts from the time the request is received. Where we have asked the enquirer for more information to enable us to answer, the 20 working days start time begins when this further information has been received.

If a qualified exemption applies and we need more time to consider the public interest test, we should reply within the 20 working 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.

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

would be where the only redacted parts are personal information such as people’s names and the covering letter explains this.

⁴ An order to this effect is to be made under section 10(4) of the Act and took effect from 1 January 2005.

12) 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 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, we need to send a refusals notice, which must contain

- a. the fact that the responsible person cannot provide the information asked for;
- b. which exemption(s) we are claiming apply;
- c. why the exemption(s) apply to this enquiry (if it is not self-evident);
- d. reasons for refusal if based on cost of compliance
- e. in the case of non-absolute exemptions, how we have applied the public interest test, specifying the public interest factors taken into account before reaching the decision
- f. reasons for refusal on vexatious or repeated grounds
- g. 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 should be retained for 5 years. There are no requirements to keep records where we have supplied the information requested.

13) 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 trust'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 Board of Trustees should set and publish a target time for determining complaints and information on the success rate in meeting the target. The Trust should maintain records of all complaints and their outcome.

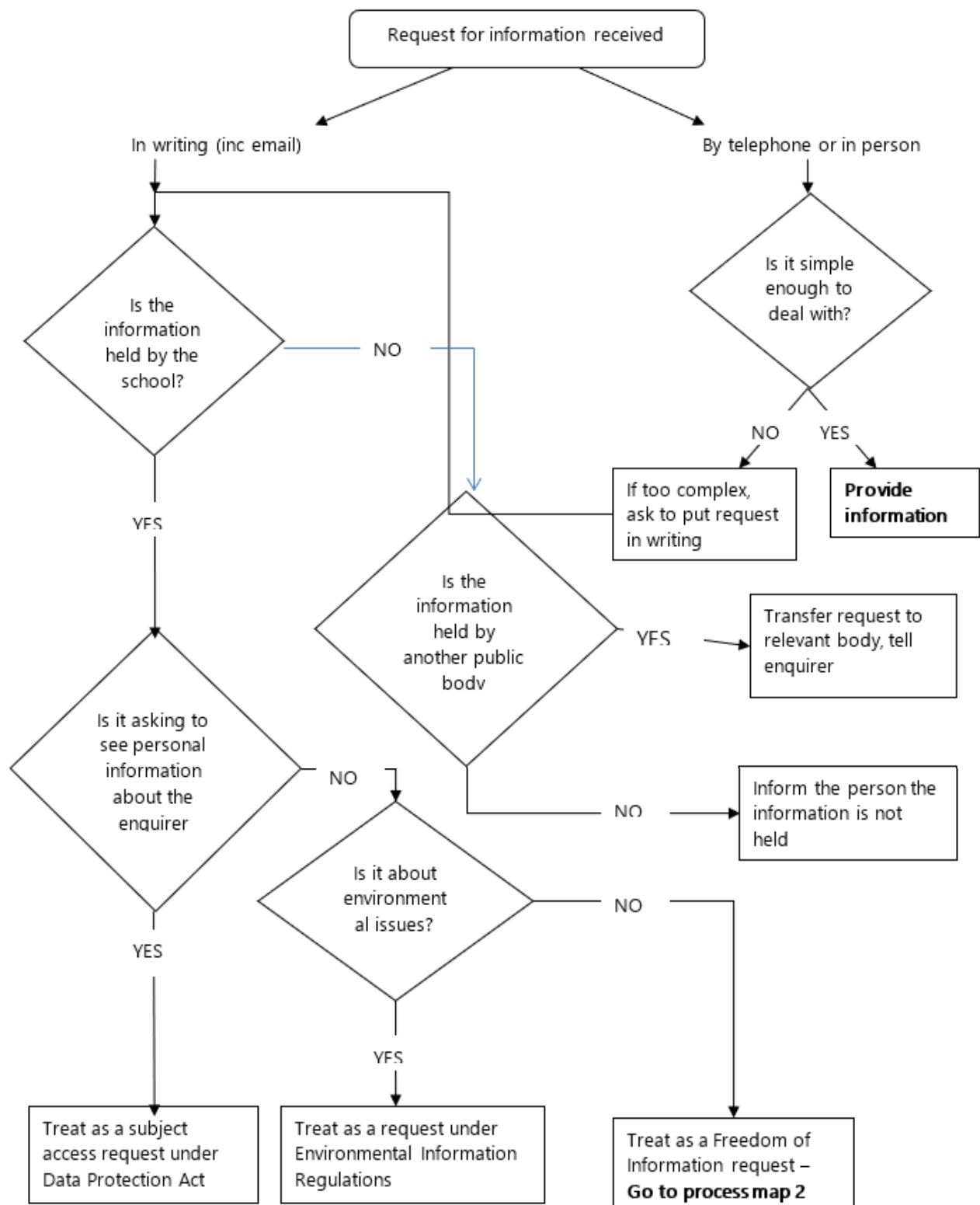
When the original request has been reviewed and the outcome is that the information should be disclosed, this should be done as soon as practicable. When the outcome is that procedures within the trust or school have not been properly followed, the trust and school should review procedures to prevent any recurrence. When the outcome upholds the trust'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:

FOI Compliance Team (Complaints)

Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF

Process Map 1 for Dealing with Requests



Process Map 2 for Dealing with Requests

