Freedom of Information Policy

Cranmer Primary School

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1. Introduction

Cranmer Primary School is committed to the principles of 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 responses to the Act and provides a framework for managing requests.

2. Procedure for Dealing with Requests

There will be a delegated person/s in school who will handle all FOI requests. The delegated person must inform the DPO and the Headteacher on receipt of a FOI request. In handling a request for information the delegated person will need to establish:

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

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

1. 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, follow the School's Data Protection Access guidance.
2. 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 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 or the DEFRA website.
3. 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 (FoIA).

4. Is this a valid FOI request for information?

A FOI request should:

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

a) Verbal enquiries are not covered by the FOI Act. 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 FOI. A request for information under EIR can be made both verbally and in writing. Where a response is made verbally you should make a written record of the request and ask the requestor to confirm it is correct.

b) In cases where the enquiry is ambiguous, we will attempt to 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 commences from the date the further information is received.

5. Does the School hold the information?

"Holding" the information means information relating to the business of the School which:

1. The School has created, or
2. The School has received from another body or person, or
3. Is held by another body on the School's behalf.

Information means both hard copy and digital information, including emails and includes draft or incomplete documents.

If the School 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 responding that you have **not** got the information the School might be expected to hold.

6. Has the information requested already been made public?

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

7. 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 substantial diversion of resources or would otherwise undermine the work of the School.

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.

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

Consultation will be necessary where:

1. 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;
2. The views of the third party may assist us to determine if information is exempt from disclosure, or
3. The views of the third party may assist us to determine the public interest.

If the third party believes that some information should not be disclosed they should reference the exemption they believe applies and the reasoning for this decision.

9. 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. Certain information is subject to either absolute or qualified exemptions. For a full list of exemptions refer to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Only where we have real concerns about disclosing the information should we refer to see whether an exemption might apply. Where the potential exemption is a qualified exemption, we need to consider the public interest test 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 will be released. Appendix 2 contains guidance on conducting a public interest test.

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

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 2018 and GDPR. Individuals must make a "subject access request" under these regulations if they wish to access information about themselves.

11. What if the details contain personal information?

Personal information requested by third parties is also exempt under the FOI where release of that information would breach data protection regulations. If a request is made for a document which contains personal information whose release to a third party would breach the data protection regulations, the document may be issued after personal information has been redacted.

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 Act 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.

12. How much can we charge?

The Act allows governing bodies to charge for providing information in certain circumstances. For further information, see Appendix 3

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. We can take account of 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. We cannot take into account the costs involved in determining whether the information is exempt or the time it would take to redact the information.

If a request would cost less than the appropriate limit in force at the time of the request, the School 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 School can turn the request down, answer and charge a fee, or answer and waive the fee. If the School decides to charge a fee, it can charge on the basis of the costs above.

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

If the School makes the decision to charge, we will send the enquirer a fees notice and do not have to comply with the request until the fee has been paid.

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

Compliance with a request must be prompt and within the prescribed limit of 20 school days following the day of receipt, or 60 working days, excluding school holidays, whichever is shorter. Where a request is received on a non-working day the time limit for responding shall begin from the next working day. Failure to comply may result in a complaint to the Information Commissioner. The response time starts from the next working day after the request is received. Where we have asked the enquirer for more information to enable us to answer, the 20 days 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 will reply within the 20 days stating which exemption(s) are being considered in regards to the request 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 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. The school has 20 working days to respond from the date payment has been received.

14. 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 will send a refusal notice, which must contain:

1. The fact that the responsible person cannot provide the information asked for;
2. Which exemption we are applying;
3. Why the exemption applies to this enquiry;
4. The reasons for refusal if based on cost of compliance;
5. 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 (see Appendix 2);
6. Reasons for refusal on vexatious or repeated grounds
7. Details of the internal complaints procedure.
8. Details on the ICO 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 we have supplied the information requested.

15. 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. If an additional question is asked prior to the request being answered this should be treated as a clarification and the time limit for responding altered accordingly.

16. Who has delegated responsibilities?

The School Board has delegated responsibility for compliance with the FOI Act to the Headteacher/ School Business Manager of the school.

17. 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 School's existing complaints procedure. Wherever practicable the review should be handled by someone not involved in the original decision. The School will set a target time for determining complaints and publish information on the success rate in meeting the target time. The School 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 School have not been properly followed, the School will review procedures to prevent any recurrence. When the outcome upholds the 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:

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

18. Associated Documents

The following documents have relevance to this policy:

- FOI Publication Scheme
- Data Protection Policy
- Records Management Policy

Appendix 1 – Exemptions

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

We will not withhold information in response to a valid request 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

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 School, and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known and 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 or
- In the case of qualified exemptions, confirming or denying would itself disclose exempted information.

Exemptions

A series of exemptions are set out in the Act and the Regulations 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 FOI 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.

What are the Absolute Exemptions?

There are 7 absolute exemptions listed in the Act at the time of writing (see the FOI Act for further detail). Even where an absolute exemption applies:

- It does not mean that we 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.

Section of the FOI Act	Exemption
S(2) 21	Information accessible by other means (e.g. in the Publication Scheme)
S(2) 23	Information supplied by, or relating to, bodies dealing with security matters
S(2) 32	Court records, and information held in relation to court proceedings
S(2) 36	Prejudice to effective conduct of public affairs
S(2) 40	Personal information – available under Data Protection Act
S(2) 41	Information provided in confidence
S(2) 44	Information whereby disclosure is prohibited by an enactment or would constitute contempt of court

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 is in Appendix 2.

Section of the FOI Act	Exemption
S(2) 22	Information intended for future publication
S(2) 30	Investigations & proceedings conducted by public authorities
S(2) 31	Law enforcement
S(2) 36	Prejudice to effective conduct of public affairs
S(2) 38	Health & Safety
S(2) 39	Environmental information
S(2) 40	Personal information relating to a third party
S(2) 42	Legal professional privilege
S(2) 43	Commercial interests

Protective markings and Applying Exemptions

When considering if an exemption to disclosure should apply, we will bear in mind that 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.

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, we will 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.

Next steps

In all cases, before writing to the enquirer, the person given responsibility for FOI by the governing body 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 is reviewed by the Headteacher and the Chair of Governors informed.

Appendix 2 – Applying the Public Interest Test

Having established that a qualified exemption definitely applies to a particular case, we must then carry out a public interest test 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 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 in the school 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 School?	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 school in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm on 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 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 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?

You will need to record the answers to these questions and the reasons for those answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. You need to decide how important each factor is in the circumstances and go on to make 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, you must contact the enquirer 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.

Appendix 3 – Charging

FOIA does not require charges to be made but schools have discretion to charge applicants a fee in accordance with the Fees Regulations.

What steps should we take in considering whether to charge?

Step 1. Is the information exempt for the purposes of the FOIA?

If information is exempt, then fees do not apply. You may not know if information is exempt until it has been located and checked. However, there are many instances, for example information in your publication scheme, when it is automatically exempt. If you wish to charge for information in your publication scheme, this should be made clear in the scheme itself. The school would need to contact the enquirer to inform them that the information is exempt, and how to obtain it.

Step 2. Do you 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 would be little point in making the calculation.

Step 3. Calculate the appropriate limit

Staff costs are calculated at £25 per hour. When calculating whether the limit is exceeded, schools can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act.

Step 4. Requests costing less than the limit.

If a request would cost less than the limit, schools 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)

Step 5. Requests exceeding the limit.

If a request would cost more than the limit, the school can turn the request down, answer and charge a fee, or answer and waive the fee. If you choose to comply with a request where the estimated cost exceeds the threshold you should calculate the charge as outlined in Step 3, plus the costs of informing the applicant whether the information is held, and communicating the information to them (e.g. printing and postage costs)

Step 6. For all requests, schools should have regard to the following two points:

- The duty to provide advice and assistance to applicants. If planning to turn down a request for cost reasons, or charge a high fee, you should contact the applicant in advance to discuss whether they would prefer the scope of the request to be modified so that, for example, it would cost less than the appropriate limit.
- Maximum amount that can be charged. The Regulations set out the maximum amount that can be charged. However, there is nothing to stop schools charging a lesser or no fee. Governing bodies should develop a consistent policy on charging.

May I aggregate the costs where there are multiple requests?

Where two or more requests are made to the school 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:

(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 school before the twentieth working day following the date of receipt of the first of the requests; and

(c) it appears to the school 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 you get multiple requests for the same information, it is good practice to include the information in your publication scheme.

How do I inform the applicant of the fee?

1. Where you intend to charge a fee for complying with a request for information then the school 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.
2. Where a fees notice has been given to the person making the request, you do not need to comply with the request unless the fee is paid within three months of the notice being received.