



Kaleidoscope

Learning Trust

Embracing diverse approaches to educational excellence

Freedom of Information Access Policy

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1. Background

The Freedom of Information Act (FOIA) 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 academies. But it recognises the need to protect sensitive information in certain circumstances and provides for certain exemptions. Even where certain exemptions apply, information must still be released if it is in the public interest to do so. Academies have a duty to provide advice and assistance to anyone requesting information.

Compliance with the FOIA is overseen by the Information Commissioner's Office (ICO), the independent body with responsibility for regulation of both the Freedom of Information Act 2000 and the General Data Protection Regulation (GDPR) 2018.

Multi Academy Trusts may choose to charge a fee for complying with a request for information under the FOIA. The fee must be calculated according to FOI regulations and the person notified of the charge before supplying the information. The Department for Education recommends that trusts respond to straightforward enquiries free of charge and only charge where the costs are significant.

There are prescribed time limits for responding to requests for information and a well-managed record and information system will enable the academy trust to reply promptly to requests.

2. Responsibilities

Kaleidoscope Learning Trust is responsible for compliance with the FOIA in each of its academies and needs to ensure that employees at the academies are able to comply with requests for information under FOIA.

The Trust Board has delegated day-to-day responsibility for FOI policy and procedures to the Data Protection Officer (DPO).

Since requests for information can be directed to the Trust through anyone who works there, the DPO must ensure that all staff are aware of the FOI request process.

The DPO will ensure that a well-managed records system and a record of refusals exist. There are only 4 reasons for not complying with a FOI request:

The information is not held

The cost threshold is reached of £450 (18 hours)

The request is considered vexatious or repeated

One or more of the exemptions apply

It should be noted that wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence and so an academy trust, or any person who is employed by, or is an officer of, or is subject to the direction of the academy trust 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.

3. Dealing with a request for information

To handle a request for information, the delegated person will ask themselves a series of questions as set out below:

a. Is it a FOI request for information?

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

Requests for personal data made under the Data Protection Act (or Subject Access Requests) are ones where the enquirer asks to see information about themselves. See the Data Protection Policy for more information.

Environmental Information Regulations e.g. enquiries relating to playing fields, recycling, car parking etc. Follow the guidance on ICO or DEFRA websites.

FOI enquiries are concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the FOIA.

All requests for information that are not data protection or environmental information requests are covered by the FOIA.

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 allowed);

describe the information requested - there must be enough information to be able to identify and locate the information;

not be covered by one of the other pieces of legislation.

Verbal enquiries are not covered by the FOIA. 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, you should ask the enquirer to put the request in writing or email, when the request will become subject to FOI.

c. Does the academy hold the information?

Holding information means information 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 email.

If the academy does not hold the information, you do not have to create or acquire it just to answer the enquiry, although a reasonable search should be made before denying that you have got it.

d. Has the information requested already been made public?

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

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 a substantial diversion of resources or would otherwise undermine the work of the academy. This however does not provide an excuse for bad records management.

f. Can the academy transfer a request to another body?

No, the academy trust will need to consider all FOIA requests it receives. If the information is held by another public authority, such as the EFA or DfE, you must notify the enquirer that you do not hold the information and suggest where they may be able to obtain the information from. You should answer any parts of the enquiry in respect of information your academy does hold.

g. 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. You do not need to consult where you are not going to disclose the information because you will be applying an exemption.

h. Does an exemption apply?

The presumption of the legislation is that you will disclose information unless the FOIA provides a specific reason to withhold it. Only where you have real concerns about disclosing the information should you look to see whether an exemption might apply. There are more than 20 exemptions but academies are likely to use only a few of them as some are very specialised in their application. Further information on exemptions and public interest tests can be found in the DfE guidance "Academies and Freedom of Information" (January 2014).

i. What if the request is for personal information?

Personal information is exempt from release under FOIA. 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 Subject Access Request made under the DPA.

j. What if the details contain third party personal information?

Personal information requested by third parties (i.e. personal information belonging to someone other than the requestor) is exempt from release under the FOIA where this release would breach the Data Protection Act. If a request is made for a document (e.g. Board 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.

4. Redacting documents

When redacting released documents:

mask the passages which are not to be disclosed and photocopy;
annotate in the margin against each blank passage, the exemption and section of the Act under which this 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.

On no account must you use the 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 would be where the only redacted parts are personal information such as people's names and the covering letter explains this.

5. Charging

The FOIA allows academy trusts to charge for providing information. The DfE recommends that academies should charge to recover the costs to academy resources that would otherwise support teaching and learning. But in practice

the DfE recommends that academies respond to straightforward enquiries free of charge and charge where the costs are significant.

If the cost of complying with the request will exceed the limit of £450, the Trust is not obliged to comply.

If the Trust intends to charge, it must send the enquirer a fees notice and will not comply with the request until the fee has been paid.

The Academy Trust has approved a publication scheme which outlines what information is covered by this scheme and how it can be obtained.

6. Time Limits

Compliance with a request must be prompt and certainly within the legally prescribed limit of 20 school days or 60 working days if that is sooner. Failure to comply could result in a complaint to the ICO. The response time starts from the time the request is received. Where you have asked the enquirer for more information to enable you to answer, the 20 days start time begins when this further information has been received.

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

7. Refusing a request

If the information is not to be provided, the person dealing with the request must immediately contact the CEO to ensure that the case has been properly considered and the reasons for refusal are sound. If it is decided to refuse a request, you need to send a refusals notice, which must contain:

- i) the fact that the responsible person cannot provide the information asked for;
- ii) which exemption(s) you are claiming 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;

- v) in the case of non-absolute exemptions, how you have applied the public interest test, 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.

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 you have supplied the information requested.

8. Complaints

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.

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 have not been properly followed, the academy 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: The Information Commissioner, Case Reception Unit, Customer Service Team, Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.