

## Freedom of Information Policy

### Introduction

The Freedom of Information (FOI) Act 2000 gives the public a general right to access recorded information held by public authorities including Further Education Colleges. The Act promotes greater openness and accountability across the public sector, therefore facilitating a better understanding of how public bodies carry out their business, why they make the decisions they do and how they spend public money. All institutions are required to issue a publication scheme. Also, the Environmental Information Regulations 2004 allow wider public access to environmental information held by the College.

The College's basic duties under Freedom of Information are; to confirm or deny whether requested information is held and to provide the requester with that information.

### The Publication Scheme

Under the FOI it is the duty of every public body to adopt and maintain a publication scheme to facilitate the proactive release of information. In accordance with the legislation, Halesowen College shall adopt the publication scheme for further education colleges (see attached). This is the Definition Document for Colleges of Further Education published by the Information Commissioner's Office. The guidance gives examples of the kind of information that the College is required to provide to discharge commitments under the FOI Act. This model scheme is in line with Section 20 of the Act. This scheme is that approved by the UK Information Commissioner and is accessible on the College website.

The publication scheme shall be reviewed annually in accordance with College policies to ensure that

- when new information is added by the College, details are added to the scheme
- when information becomes obsolete or superseded then the information is removed
- contact details of key staff or teams are accurate and data is accessible

Any changes to the standard scheme must be approved by the UK Information Commissioner.

The College will make information in the definition document available unless

- it is not held
- information is exempt under the FOI Act or Environmental Information Regulation (EIR)
- prohibited under statute
- directly available on an external website (link to be provided)
- impractical or too resource intensive to provide

The College will be in breach of the FOI Act if it does not adopt an approved scheme and/or does not publish information in accordance with the scheme it has adopted. The College will compile and publicise a guide to the specific information made available under the scheme. Frontline staff shall be aware of the commitment the College has made to provide information and how it is obtained.

## **Responsibilities for Freedom of Information**

Under the FOI Act the governing body is responsible for compliance. However to manage this on a day to day basis the College shall establish a team responsible for Data Protection and FOI compliance comprising:

- Director of Finance and Corporate Services
- CIS Manager
- CIS and Infrastructure Development Director
- Safeguarding and Inclusion Manager
- Skills and Performance Director
- Senior Personnel and Equality Officer

The CIS Manager is the named Data Co-ordinator. The publication scheme is maintained by the Business and Charity Operations Manager through the document management system.

All staff within the College must identify what information they hold which comes under the Act.

## **Handling Freedom of Information Requests**

The FOI Act permits access to all types of information, for example organisational charts, policies and procedures, indeed all documents specified in the publication scheme. From 1 January 2005 members of the public have the right to request any information held by the College known as the 'right to know'.

In accordance with the publication scheme, where it is within the capability of the College, information will be provided on the website <http://www.halesowen.ac.uk>. However, where this is not available and/or an individual does not wish to access the information by the website this may be obtained in hard copy format.

The FOI Act does not specify a formal request procedure. For a request to be valid, every application for information has to be in written form which includes a fax, letter and email plus social networking sites, and must include the requester's real name. Whereas the Act treats all requesters alike, the College may decide to check identity if it is clear they are using a pseudonym or have concerns that the request may be vexatious. Staff should advise people making verbal requests to contact the College in written form (except for Environmental Information Regulation requests; see below).

Under the Freedom of Information Act, any individual, anywhere in the world, is able to make a request to the College for information. They do not have to indicate why they want the information. An applicant is entitled to be informed in writing as to whether the information is held and to have the information communicated to them or provided with an explanation why this is not being done.

Any request made to the College stating the name of the applicant, including an address for correspondence and describing the information required, qualifies as a request for information.

Should a request not be valid under FOI the College still has an obligation to provide advice and assistance to requesters ie inform them of their rights under FOI and explain how to make a valid request.

Any requests for information received by a member of staff via email or as a paper copy must firstly be forwarded to the Data Co-ordinator who will liaise with colleagues to provide the information. A log is maintained of all requests and this is monitored by CE/SMT who approve

all responses. Requests which are potentially vexatious shall be forwarded directly to the Director of Finance and Corporate Services (see below).

If a person is asking for their own data it should be dealt with under the approved Data Protection Policy. Any request for environmental information must be compliance with the Environmental Information Regulations 2004.

## **Timescale for Compliance**

On receipt of a request the College is obliged to inform the applicant in writing whether the information requested is held and if so, communicate that information to the applicant, promptly, but not later than 20 working days after receipt of the request.

The 20 working day clock starts:

- the day after the College receives the request. The time limit for compliance is the twentieth working day following the date of receipt.

or

- the day the College receives further information it reasonably requires in order to identify and locate the information requested.

However, there is provision to claim a reasonable extension (up to 20 days) where it requires more time to consider the public interest test.

A request is received when it is delivered to the College, or when it is delivered to the inbox of a member of staff. The date of receipt is **not** the date the request is passed to the appropriate person for processing. The impact of charges on this timescales is detailed below.

In respect of emails, however, where an automated 'out of office' message provides instructions on how to re-direct a message, the request would not be 'received' until it was resent to the alternative contact.

The correspondence to the applicant must state:

- whether the College holds the information of the type requested;
- if so whether it cannot be supplied due to the constraints of the Data Protection Act which takes precedence over any FOI rights;
- whether the information is exempt from disclosure (see Exemptions below).

If the information is held and able to be provided ie within terms and conditions of the Data Protection Act and is not subject to an exemption, it must be given to the individual in so far as possible in the format requested ie hard copy or electronic. The College may draw information from multiple sources in order to respond. However, there is no obligation to determine an answer or find out information from elsewhere if the relevant information is not already recorded in the written form.

Information will be collated and prepared by the FOI team in conjunction with other appropriate College staff. For each request the FOI log must be completed stating:

- Date of request (as College date stamp)
- Nature of request
- Name and address of individual
- Person within College responsible for information

- Length of time taken to locate information
- Any exemptions applied
- Costs incurred/charged
- Whether applicant was satisfied

The completion of such a log is necessary to ensure that if referred to the Information Commissioner the College could demonstrate that the process was completed fairly and within the legislation. As stated above this is monitored by CE/SMT.

If the College refuses to confirm or deny that the information is held or refuse to provide information then a refusal notice will be issued within the statutory timescales. This will inform the requester of their right to complain to the Information Commissioner.

## Exemptions

Some information is exempt from disclosure and so does not have to be provided.

In certain circumstances the College may refuse a FOI request:

- when the request is vexatious;
- when the request repeats a previous request from the same person;
- when the cost of compliance exceeds the appropriate limit;
- when the information falls under one of the exemption.

The Freedom of Information Act provides two distinct but related rights of access to information which impose corresponding duties on the College. These are:

- the duty to inform the applicant whether or not information is held by the authority, and, if so,
- the duty to communicate that information to the applicant.

The Act refers to the first duty as 'the duty to confirm or deny'.

If information has been requested but is not held, it will normally be reasonable to inform the applicant of this fact. However, there may be some exceptional cases where it would not even be right to confirm or deny that information requested was held.

There are two broad categories of exemptions:

- **Absolute exemptions.** These are cases where the right to know is wholly disapplied. In some cases there is no legal right of access at all, for instance information supplied by or relating to bodies dealing with security matters or information covered by parliamentary privilege. In other cases, for instance information available to the applicant by other means or personal information relating to the applicant, it may be possible to obtain the information by alternative means although not under FOI.
- **Qualified exemptions.** These are cases where the College, having identified a possible exemption, must consider whether the public interest in maintaining the exemption is greater than that in confirming or denying the existence of the information requested and providing the information to the applicant.

The full list of exemptions can be found in Appendix A.

Exemptions are subject to the public interest test unless FOI states that they are absolute exemptions.

When applying the test, the College is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.

The main factors counting against the disclosure of information are those which are set out in the exemptions themselves. For instance, there is an obvious public interest in national defence, maintaining good international relations and law enforcement. If disclosure of information would adversely affect these matters, then it is relevant to consider the exemptions to weigh the possible adverse effect of disclosure against the positive benefit of openness.

There may, however, be other, additional factors to take into account once it has been established that at least one of the exemptions has been engaged. Consideration of the European Convention on Human Rights, for instance may lead to the conclusion that information should not be disclosed because it might prejudice the right to a fair trial. Should the College receive a request for information which is covered by an exemption, the applicant will be informed wherever possible within 20 days of receipt of the request that the information cannot be provided together with an explanation. However, when considering a qualified exemption it is reasonable for the twenty-day period to be extended provided an interim response is issued within the timescale together with an estimate of when the final response is expected up to a maximum of 40 working days from receipt of the request. In addition the College must inform the applicant that they have the right to appeal to the Information Commissioner about the information being withheld. Where the College does not hold the requested information then again this must be communicated within 20 days giving a brief explanation of why this is not held if appropriate and similarly where the applicant may find the information.

## **Vexatious and Repeat Requests**

A request can be treated as vexatious where it would impose a significant burden on the College in terms of expense or distraction and meets at least one of the following criteria:

- It clearly does not have any serious purpose or value;
- It is designed to cause disruption or annoyance;
- It has the effect of harassing the College;
- It can otherwise fairly be characterised as obsessive or manifestly unreasonable.

Each specific request should be looked at and assessed individually.

The College will not refuse a request for information which should be available through the publication scheme on the grounds that it is vexatious.

Issues of vexatiousness may arise where the College receives requests from individuals who have previously registered a grievance, pursued a complaint or otherwise been involved in a dispute. It is not unusual for those who believe they have been unfairly treated by the College to pursue or attempt to re-open their grievance by using the FOI.

In circumstances where requests are used solely for the purpose of going over the same ground raised in a previously closed complaint which has exhausted available procedures, the College will view the request as vexatious.

Any request considered to be vexatious will be passed to the Director of Finance and Corporate Services and the advice of the Data Commissioner sought as required. Should this be linked to a complaint/dispute this will then be referred to the Principal.

Where the College has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

All refusals for information will be communicated to the applicant in accordance with the paragraph above on exemption.

## **Fees**

The College will aim to publish most information in the guide on the website which can be accessed free of charge. Any charges shall be straightforward, transparent and fair.

In most cases, information will be provided free of charge. The Act provides that where information is reasonably accessible to applicants through other means, such as through other legislation or through the College's publication scheme, it is exempt. Hence, the rules for costing and charging for compliance with the Act do not apply in these cases.

However, sections 9 and 13 of the Freedom of Information Act allow the College to charge for answering requests in certain cases. The Act states that the College may either charge for or decline requests for information that would cost more than £450 to deal with the request.

This is referred to as the appropriate limit. The College must estimate whether a request is likely to breach the 'appropriate limit by' taking into account staff costs incurred in:

- determining whether it holds the information requested
- locating the information or documents containing the information
- retrieving such information or documents
- extracting the information from the document containing it (including collating or copying information)

The College uses a standard hourly rate of £50 to calculate the staff costs of answering requests.

If it is appropriate to charge a fee for dealing with a request, the College will also add on any non-staff costs or disbursements - for instance, photocopying, printing, or postage.

If the request exceeds the 'appropriate limit' the requester will be offered some advice and assistance to identify whether the scope of the request can be narrowed in order that the information can be supplied free of charge.

If the applicant does not agree with the College's decision that the cost of complying with the request would exceed the appropriate limit, they can ask the Information Commissioner to investigate.

Any requests for personal information would be subject to the Data Protection Act and the fees are clearly defined in the College's Data Protection Policy.

Whenever it is proposed to charge a fee the requester will be supplied with a fee notice, within the 20 day timescale, that will specify the specific amount which the College proposes to charge in order to deal with the request. If the requester does not supply the requested fee by the end of three months from the date the requester was given notice, the College is not obliged to comply with the request.

Where the request does not exceed the appropriate limit it may be appropriate to charge for disbursements, particularly if the information requested is voluminous. As appropriate the requester will be contacted to discuss if/how the scope of their request could be narrowed in order to keep the fee charged as little as possible.

Should a number of requests be received from either the same person or different people asking for the same or similar information within a short time of each other the College may consider aggregating these requests to take an overall view of the resources which would have to be committed to answering them.

The College can only aggregate requests in the following circumstances:

- two or more requests for information have been made ; they must be either from the same person, or from 'different persons who appear to the College to be acting in concert or in pursuance of a campaign'; and
- the requests must relate to the same or similar information; and
- they must have been received by College within 60 consecutive working days.

A request for information under freedom of information should be answered within 20 working days. If the College issues a fee notice following the time period should be calculated in accordance with the example below:

- for example a request for information is received by a Public Authority on Monday 1st. The College then issues a fees notice on Thursday 4th. The working days should be calculated as follows:

Monday 1st - request received  
Tuesday 2nd - first working day  
Wednesday 3rd - second working day  
Thursday 4th - College issues fees notice  
Wednesday 10th - payment received  
Thursday 11th - 3rd working day, etc

If the actual cost of answering the request turns out to be greater than the estimated cost charged by way of a maximum fee, the College must bear the additional cost. The Freedom of Information Act does not allow for another fees notice to cover the additional cost. Conversely if the actual cost of answering the request proves to be less than the fee charged, the College should consider refunding the excess money to the applicant.

All charges shall be made on an official College invoice and do not attract VAT.

## **Environmental Information Regulations**

Environmental Information Regulations includes data on air quality, water, waste management, noise and sustainability. Requests may be verbal and the College has to respond within twenty working days except when a request is complex or voluminous. Reasonable fees can be charged as above except when the information is examined on

College premises. Exemptions from disclosure are available only if the public interest in with adding the information outweighs the public interest in disclosure.

Requests under the Environmental Information Regulations will be handled as requests under FOI. The Data Co-ordinator will liaise with the Estates Manager.

## Complaints

Complaints under Freedom of Information should be referred to the Data Commissioner at the following address/website:

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

Website: [ico.gov.uk](http://ico.gov.uk)

## Review

<b>Reviewed</b>	<b>By</b>	<b>Date</b>
Updated by	Jacque Carman	22.02.16
Approved by	CE/SMT	24.02.16

### The Exemptions

#### Qualified

- Information intended for future publication (s.22)
- Defence (s.26)
- International relations (s.27)
- Relations within the UK (s.28)
- The economy (s.29)
- Investigations and proceedings (s.30)
- Law enforcement (s.31)
- Audit functions (s.33)
- Formulation of government policy (s.35)
- Prejudice to effective conduct of public affairs (s.36)
- Communications with the Royal Family (s.37)
- Endangering health and safety (s.38)
- Environmental (s. 39) (dealt with by other legislation)
- Some personal information (s.40).
- Legal professional privilege (s.42)
- Trade secrets and commercial interests (s.43)

These qualified exemptions are subject to the public interest test. The principle of the legislation is to release information unless there is a valid exemption.

#### Absolute

- Information accessible by other means (s.21)
- Information supplied by or relating to, bodies dealing with security matters or national security (s.23 and s.24)
- Court records (s.32)
- Parliamentary privilege (s.34)
- Personal information (s.40)
- Information provided in confidence (s.41)
- Information whose disclosure is prohibited by law (s.44)