



Melcombe Primary School Freedom of Information Policy

Reviewed by: Wayne Leeming

Date adopted: 28th March 2019

Signed EA Anderson

Date 28.3.19

Emma Anderson
Chair of the Governing Board

Date for Review: 28th March 2021

1. Introduction

Melcombe Primary School 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.

2. Background

The Freedom of Information Act 2000 (FoI) came fully into force on January 1 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 school holds the information, and to receive a copy, subject to certain exemptions.

The information which the school routinely makes available to the public is available on the school's website at www.melcombeprimary.com. 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 DCSF 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 Fol can be addressed to anyone in the school; so all staff need to be aware of the process for dealing with requests. 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 Fol enquiry. There is a time limit of 20 days excluding school holidays for responding to the request.

For further information and guidance, see the DCSF "Freedom of Information Act 2000 – A Guide for Maintained Schools on Full Implementation from January 2005."

3. Scope

The Fol Act joins the Data Protection Act and the Environmental Information Regulations as legislation under which anyone is entitled to request information from the school.

Requests for personal data are still covered by the Data Protection Act. (DPA). Individuals can request to see what information the 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 school 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 FoIA, but unlike FoIA requests, they do not need to be written and can be verbal.

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

4. Responsibilities

The school 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

Melcombe Primary School has adopted the Model Publication Scheme for Schools approved by the Information Commissioner.

The Publication Scheme and the materials it covers will be readily available from the school office or in some cases on the 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 either absolute or qualified exemptions. The exemptions are listed in Appendix 2.

When we wish to apply a qualified exemption to a request, we will invoke the public interest test procedures to determine if public interest in applying the exemption outweighs the public interest in disclosing the information.

We will maintain a register of requests where we have refused to supply information, and the reasons for the refusal. The register will be retained for 5 years.

8. Public Interest

Unless it is in the public interest to withhold information, it has to be released. We will apply the Public Interest Test before any qualified exemptions are applied. For information on applying the Public Interest Test see Appendix 3.

9. Charging

We reserve the right to refuse to supply information where the cost of doing so exceeds the statutory maximum, currently £450.

The school may choose to charge a fee for complying with requests for information under FOI. The fees will be calculated according to FOI regulations, (see Appendix 4) and the person notified of the charge before information is supplied. The school will endeavour to respond to most requests free of charge, and only charge where significant costs are incurred.

Costs will take in to account staff time, as well as direct costs, but if the total is less than the statutory maximum, we will only charge the direct costs (e.g. printing, postage etc.). If the cost exceeds the statutory maximum we contact the enquirer, and see if they wish to reduce the request, thus reducing the time and costs to below the maximum.

10. Responsibilities

The Melcombe Governing body has delegated the day-to-day responsibility for compliance with the FOIA to the Head Teacher. He will designate a member of staff to be the FOI lead.

11. Complaints

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

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 made in writing to the Information Commissioner's office.

12. Monitoring, Evaluation and Review

The school will review this policy annually and assess its implementation and effectiveness. The policy will be promoted and implemented throughout the school.

Appendix 1

Procedure for Dealing with Requests

Note: This Appendix is adapted from the DfES Guide for Maintained Schools on Full Implementation from January 2005.

To handle a request for information the governing body or delegated person will need to ask themselves a series of questions. These are set out below.

1. Is it a FOI request for information?

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. If the enquiry is a Data Protection request, follow your existing school DPA guidance.
- *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, follow the guidance on the IC's website or 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.

2. Is this a valid FOI request for information?

An FOI request should:

- be **in writing**, including on-line requests, 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 and
- 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, you should ask the enquirer to put the request in writing or email, when the request will become subject to FOI.

3. Does the school hold the information?

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

If the school 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 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, 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. 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 the local authority, first check with them they hold it, then transfer the request to them. You must notify the enquirer that you do not hold the information and to whom you have transferred the request. You should answer any parts of the enquiry in respect of information your school does hold.

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

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 you to determine if information is exempt from disclosure, or
- the views of the third party may assist you to determine the public interest.

8. Does an exemption apply?

The presumption of the legislation is that you will disclose information unless the Act provides a specific reason to withhold it and is mainly intended to protect sensitive or confidential information.

Only where you have real concerns about disclosing the information should you look to see whether an exemption might apply. Even then, where the potential exemption is a qualified exemption, you 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 has to be released. Appendix 3 contains guidance on conducting a public interest test.

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.

11. How much can we charge?

The Act allows governing bodies to charge for providing information. For further information, see Appendix 4.

The first step is to determine if the threshold (currently £450) would be exceeded. Staff costs should be calculated at £25 per hour. You 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. You cannot take into account the costs involved in determining whether information is exempt.

If a request would cost less than the appropriate limit, (currently £450) the school 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).

If a request would cost more than the appropriate limit, (£450) the school can turn the request down, answer and charge a fee, or answer and waive the fee. If it decides to charge a fee, and does not have other powers to do so, it can charge on the basis of the costs outlined in Appendix 4.

Schools will however wish to consider whether calculating the cost of the fee outweighs the cost of providing the information. In practice we recommend that schools respond to straightforward enquiries free of charge and charge where the costs are significant.

If you are going to charge you must send the enquirer a fees notice and do not have to comply with the request until the fee has been paid. Appendix 4 gives more information on charging.

12. 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 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 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.

If a qualified exemption applies and you need more time to consider the public interest test, you should reply 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.

Where you 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.

13. 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, you need to send a refusals notice, which must contain

- the fact that the responsible person cannot provide the information asked for;
- which exemption(s) you are claiming apply;
- why the exemption(s) apply to this enquiry (if it is not self-evident)
- reasons for refusal if based on cost of compliance (see Appendix 4)
- 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 (see Appendix 3)
- reasons for refusal on vexatious or repeated grounds
- 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.

14. What do I 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 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.

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.

Appendix 2

Applying the Public Interest Test

Note: This Appendix is taken from the DfES Guide for Maintained Schools on Full Implementation from January 2005.

Background

Having established that a qualified exemption(s) definitely applies to a particular case, you 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 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 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 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 your 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.

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

Note: This Appendix is based on the guidance from the DfES and the Department for Constitutional Affairs.

Important: **Different charges apply for requests under the Data Protection Act**

1. May I charge a fee?

FOI does not require charges to be made but schools have discretion to charge applicants a fee in accordance with the Fees Regulations (fees Regulations on the DCA website www.dca.gov.uk/foi/secleg.htm)

2. What steps should we take in considering whether to charge?

Step 1. Is the information exempt for the purposes of the FOI Act?

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. 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.

3. 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:

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

4. How do I inform the applicant of the fee?

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.

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.