



# General Data Protection Regulation (GDPR)

## Fernwood Primary and Nursery School Freedom of Information Policy

June 2019

### **Freedom of Information Policy**



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## Freedom of Information Policy 1. Introduction

Fernwood Primary and Nursery School ('the school') is committed to transparency in its dealings with the public and welcomes the aims of the Freedom of Information Act 2000 and the access provisions of the Data Protection Act 1998, GDPR 2017 and Data Protection Act 2018. The school will make every effort to meet its obligations under the legislation and will regularly review procedures to check that it is doing so.

The starting point for this policy is that the public have a right to access recorded information held by the school and that the school will seek to promote open access to information, subject to exemptions contained within the relevant legislation.

## 2. Background

The Freedom of Information Act 2000 (FoIA) applies to all public authorities and came fully into force on 1<sup>st</sup> January 2005. The Act specifically identifies schools as public authorities (Part IV of Sch 1 of FoIA). It provides the public with a statutory right of access to recorded information held by authorities (subject to certain exemptions) within twenty working days. The Act applies to all information that falls within the scope of the Act (not just that created from 1<sup>st</sup> January 2005) and is fully retrospective. Section 19 of the Act also obliges the school to make information available through an approved "publication scheme".

In addition, individuals currently have a statutory right of access to their own "personal data" under the Data Protection Act 1998 (DPA). The DPA and FoIA work together to effectively exempt personal information from disclosure under FoIA. Changes in the definition of what constitutes personal data means these legal arrangements will be further amended by the GDPR 2017 and the Data Protection Act 2018 when they come into force after 25 May 2018. As the full implications of the legislation becomes clearer, the school will amend this policy to reflect relevant changes.

The EIR (Environmental Information Regulations 2004) provides a statutory right of access to "environmental information", as defined in these regulations. The EIR came into force on 1<sup>st</sup> January 2005 and replaces the existing 1992 Regulations. The EIR are also fully retrospective.

The Information Commissioner Office (ICO) regulates and enforces these three statutory/legal information access regimes.

Each regime contains categories of exempt information, where information can be withheld. An applicant who is member of the public can refer any decision to withhold information under an exemption to the ICO, who can overturn a decision to withhold information. For the purposes of this policy, the "public" is defined as any individual or organisation anywhere in the world and an "information request" refers to any request for recorded information made under the FoIA, EIR or DPA.

### 3. Timescales

Freedom of Information (and EIR) requests should be dealt with within 20 working days, excluding school holidays.

Currently, requests for Data Protection (subject access requests) should be dealt with within 40 calendar days. Once the GDPR / DPA 2018 is fully implemented within English law the timescale for responding will be 30 days. For maintained schools, requests for access to pupil education records under Education (Pupil Information) (England) Regulations 2000 should be dealt with within 15 school days.

### 4. Delegated responsibilities

Overall responsibility for ensuring that the school meets the statutory requirements of the FoIA, EIR and DPA rests with the Governors and the Chair of Governors has overall responsibility for information management issues. They have delegated the day-to-day responsibility of implementation to the Headteacher.

The Headteacher is assisted by a school leader e.g. the School Business Manager, who currently has responsibility for 'access to information'. All school staff are responsible for ensuring that they handle requests for information in compliance with the provisions of the various Acts, taking advice from the FoI officer where necessary.

### 5. Scope

This policy applies to all recorded information held by the school that relates to the business of the school. This includes:

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

As a general rule, this policy does not cover personal written communications (such as personal e-mails sent by staff). The school's Data Protection Policy establishes the standards regarding the use of "personal data" (as defined in the Data Protection Act 1998, GDPR 2017 and Data Protection Act 2018).

## **6. Requesting information**

### **6.1 Procedures**

The practical process for handling information enquiries in line with the relevant legislation will be produced and copies can be obtained from the school's FoI Lead or Lead for 'access to information'.

The school has a duty under both the FoIA and EIR to provide advice and assistance to applicants making information requests. This includes assisting the applicant in making the application for information. Although no such duty exists under the DPA, the same level of care will be provided.

### **6.2 Charges**

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

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

Where the school estimates that the cost of locating the information will exceed the statutory threshold of £450 or around 18 hours work, it will consider whether to comply with the request. The school is not obliged to comply with such a request but may choose to do so.

Currently, the DPA 1998 permits a charge of up to £10 to be made for responding to requests for personal data. Under GDPR 2017 and DPA 2018 there will be no charge.

Under the access to educational records, there is a sliding scale of up to £50 for copies of educational information.

### **6.3 Publication**

Section 19 of the FoIA obliges the school to make information pro-actively available in the form of a "publication scheme". This scheme will list categories, or "classes" of information that will routinely be made available without the need for a specific information request. The school will indicate in the scheme where it wishes to charge for providing categories of information. The scheme will be published on the school's website.

The school plans to review this scheme regularly. Whenever any information is provided in response to a recorded FoIA enquiry, the school will assess whether the information is suitable for wider publication. In general, there will be a presumption in favour of publishing such information on the school's website.

## 7. Withholding Information

The Freedom of Information Act contains 23 exemptions allowing the withholding of information. There are two categories; absolute and non-absolute. The school will only withhold information if it falls within the scope of one or more of these exemptions.

Where an absolute exemption applies, the school can automatically withhold the information. However, where the exemption is non-absolute the information can only be withheld where the school decides that the public interest is best served by withholding the information. Certain exemptions also contain a “prejudice test”, which means that the exemption can only be claimed if disclosing the information would prejudice the interest protected by the exemption.

The school will only withhold information covered by the exemption. Complete files or documents will not be withheld just because part of the information is covered by an exemption.

The school will only apply an exemption where it has reason to believe that prejudice might occur to the interest protected by the exemption. In addition, wherever a “public interest” exemption is being considered, the school will only withhold that information which it can demonstrate that the public interest will be best served by withholding. When considering withholding information under a non-absolute exemption the school will consider whether the release of the information would:

- promote further understanding of current issues of public debate;
- promote the accountability of decisions taken by the school and the spending and allocation of public money;
- bring to light matters of public safety;
- allows the public to understand and challenge decisions made by the school;
- be otherwise in the public interest.

Where information is withheld under an exemption, in most cases the reason behind the decision will be made clear to the applicant, citing the exemption under which the information is being withheld. The applicant will also be given details of the right to challenge the decision through the school’s Governing Body and the right of appeal to the Information Commissioner’s Office.

Where a staff member plans to apply an exemption, s/he may consider whether other schools hold similar information. If this is likely, s/he may contact the relevant school(s) to discuss the substance of request and ensure that a consistent response is provided to the applicant.

The school will also refuse to supply information under the FoIA where the request is considered “vexatious” or “repeated” and under the EIR, where the request is considered

‘manifestly unreasonable’.

## 8. Releasing a third party’s information

Where, in response to a request, information relating to a third party (either an individual or other organisation) has to be considered for release, the staff member that received the request will seek input from the school leader responsible for access to information requests prior to the release of the information.

The release of third party information will be considered carefully to prevent actions for breach of confidence or, in the case of living individuals, breaches of the DPA. Both the EIR and FoIA permit information to be withheld when its release would breach the provisions of the DPA.

When the requested information relates to a living individual and amounts to “personal data” as defined in the DPA, its disclosure could breach the DPA. Therefore, the release of third party personal information relating to living individuals will be considered in accordance with the data protection principles and, in particular, the “third party” provisions of the data protection regulations.

Where appropriate, the school will contact the individual to ask for permission to disclose the information. If consent is not obtained, either because it was not considered appropriate to approach the third party or the third party could not be contacted or consent is refused, the school will then consider if it is reasonable to disclose the information, taking into account:

- any duty of confidentiality owed to the third party
- the steps taken to seek consent
- whether the third party is able to give consent and
- any express refusal of consent
- whether the information is already in the public domain

The decision to disclose third party information will also take into account the impact of disclosure on the third party, relative to the impact on the applicant of withholding the information. Where the third party has been acting in an official, rather than private capacity, the school will be minded to disclose the information, although decisions will be made on a case-by-case basis.

Where the information relates to a staff member, the provisions of the DPA will still apply in many circumstances but the nature of the information will influence the school’s decision whether to release the information. Where the information relates to a matter clearly private to the individual, e.g. a disciplinary hearing, the information is likely to be withheld. However, where the information relates to the member of staff acting in their official capacity, e.g. an expenses claim, the information will normally be released. The exemption relating to the release of a third party’s personal data will not be used to withhold information about administrative decisions taken by the school.

As the DPA only relates to living individuals, the exemption relating to Data Protection under both the EIR and FoIA will not apply to information held about a deceased person. Where a request might be controversial, the staff member will seek input from the FoI officer who will take advice from the Headteacher / Governing Body where necessary.

Where the third party is an organisation, rather than an individual, the data protection provisions will not apply. The school will consider consulting the third party concerning the release of their information where:

- the views of the third party may assist the school to decide whether an exemption under the Act applies to the information and
- in the event of the public interest test being applied, where the views of the third party may assist the school to decide on where the public interest lies.

Consultation will not be undertaken where:

- the school will not be disclosing the information due to some valid reason under the Act
- the school is satisfied that no exemption applies to the information and therefore cannot be withheld and
- the views of the third party will have no effect on the decision, e.g. where there is other legislation preventing disclosure.

Where input from a third party is required, the response time for the request remains the same. Therefore, it will be made clear to the third party at the outset that they have a limited time for their views to be provided and that where responses are not immediate, the decision to disclose may have to be made without their input for the school to comply with the statutory time limits in the legislation.

The school will endeavour to inform individuals and organisations submitting information that the information might be released following an information request and, where appropriate, will provide the supplier of the information an opportunity to request confidentiality or supply reasons as to why the information should be treated confidentially. Ultimately however, whatever a third party's view it is the school's decision whether to disclose the information.

## **9. Information held within contracts with the school**

Any contractual information, or information obtained from organisations during the tendering process, held by the school are subject to the provisions of the FoIA and EIR. Whenever the school enters into contracts, it will seek to exclude contractual terms forbidding the disclosure of information beyond the restrictions contained in the legislation. A standard form of wording will be included in contracts to cover the impact of FoIA and EIR in relation to the provision of information held in contracts.



The school can withhold contractual information where its disclosure under either the FoIA or EIR could be treated as actionable breach of confidence. Where the school intends to include non-disclosure provisions in a contract, it will agree with the contractor a schedule of the contract that clearly states which information should not be disclosed.

The school will only agree to enter confidentiality clauses where the information is confidential in nature and that it is confident that the decision to restrict access to the information is a reasonable one. The school may choose to seek external advice in making this judgement. Where information is not covered by the exemption relating to information accepted in confidence, a further exemption specifically under FoIA may be relevant, relating to commercial interests. This exemption is subject to a “public interest” test. Whenever the school must consider the release of such information, it will contact the relevant organisation to obtain its opinions on the release of the information and any exemptions they may think relevant. However, the school will make the final decision relating to the disclosure of the information.

The school can also withhold information contained in contracts where any of the other exemptions listed in the FoIA or EIR are appropriate, although information will only be withheld in line with the school’s policy on the use of exemptions. All future contracts should contain a clause obliging contractors to co-operate fully and in a timely manner where assistance is requested in responding to an FoIA or EIR request.

## **10. Complaints procedure**

Whenever the school withholds information under an exemption, or does not produce it for any other reason (e.g. it is not held), it will inform the applicant of their right to complain about the decision through the school’s complaints procedure and of the right of appeal to the Information Commissioner. Any complaint received will be dealt with in accordance with the school’s complaints procedure as detailed in its Complaints Policy. If the result of the complaints is that any decision to withhold information be overturned, the information will be supplied as soon as it is possible.

## **11. Requests made under the Data Protection Act and Education Regulations 2000**

The DPA1998, GDPR 2017 and DPA 2018 entitle an individual to his or her ‘personal data’, as defined in the legislation, where the information is held on an automated system, such as a computer and manual files, where they amount to what is described as an “accessible record” or in a structured filing system, defined in the regulations as a “relevant filing system”.

The parental right to receive information pertaining to the “educational record” of their child should continue to be administered under the Education (Pupil Information) (England) Regulations 2000.

Whenever a request for personal data is received and is not covered by the regulations above, the request will be administered in accordance with the relevant section of the school's FOIA operating processes.

Whenever a request is made under the data protection provisions for personal data, the school will provide the applicant with the relevant information contained within files relating to that individual that is accessible under both the DPA and FOIA, subject to any exemptions.

Where it is not possible to remove third party information without rendering the response meaningless to the individual, the provision of third party information will be considered in line with section 8 of this policy regarding the disclosure of third party information.

Data protection regulations contain different types of exemption and therefore, whenever a member of staff is considering applying an exemption, he/she will seek the opinion of the school leader responsible for access to information requests.

## **12. Illegal actions**

It is a criminal offence under any of the three information regimes for members of staff to alter, deface or remove any record (including e-mails) following receipt of an information request. Both the FOIA and EIR contain specific provisions to make such action a criminal offence.

## **13. Review of the Policy**

This policy is due for review in May 2019 and then annually thereafter.

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