



“I have come in order that you might have life – life in all its fullness.”
John 10:10

Freedom of Information Policy

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| Policy accepted by FGB on: | 8/2/2018 |
| Next review: | Spring 2019 |
| Signed (Chair of Governors): |  |
| Statutory policy: <u>Yes/No</u> On school website: <u>Yes/No</u> | |

FREEDOM OF INFORMATION POLICY

(This policy is based on Somerset County Council's *e-Learning and Information Management (eLIM)* model policy and conforms to the model scheme for schools approved by the Information Commissioner. This policy should be read in conjunction with both Christ Church's Freedom of Information Publication Scheme and Data Protection and Information Security Policy.)

1. Introduction

Christ Church C of E First School is committed to the principles of accountability and the general right of access to information set out in the Freedom of Information Act 2000 (which is referred to as FOIA in the rest of this document). This policy outlines Christ Church's response to the FOIA and a framework for managing Freedom of Information (FOI) requests.

2. Background

The school recognises that under the FOIA, any person (the enquirer) has a legal right to ask for access to information held by the school. The enquirer is 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 included in the school's Freedom of Information Publication Scheme (FOIPS). Requests for other information will be dealt with in accordance with statutory guidance. (See Appendix A.)

As requests under the FOIA can be addressed to anyone in the school, all staff will be made aware of the process for dealing with requests.

The school will 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.

The school will respond to each request within 20 days, excluding school holidays.

3. Scope

If any element of a request to the school includes personal or environmental information, these will be dealt with under the Data Protection Act (DPA) or Environmental Regulations (EIR). Any other information is a request under the FOIA, 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 EIR. They also cover issues relating to Health and Safety. Requests under the EIR are dealt with in the same way as those under the FOIA, but, unlike FOI requests, they do not need to be written and can be verbal.

4. Obligations and duties

The school recognises its duty to:

- provide advice and assistance to anyone requesting information. The school 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 the school holds in accordance with the procedures laid down for dealing with requests.

5. Responsibilities

The Governing Body has delegated the day-to-day responsibility for compliance with the FOIA to the Headteacher. The Headteacher has nominated the School Business Manager as the delegated person to deal with all FOI requests.

6. Publication Scheme

Christ Church's Freedom of Information Publication Scheme is based on the Somerset County Council (the LA) eLIM (e-Learning and Information Management) *Model Freedom of Information Publication Scheme for Schools*, which is approved by the Information Commissioner. Christ Church's FOIPS is available on the school website and the materials it covers are available from the school office.

7. Dealing with requests

The school will respond to all requests in accordance with the procedures laid down in Appendix A. The school will ensure that office staff are aware of the procedures.

8. Exemptions

The school will consider if information requested is subject to exemption. The exemptions are listed in Appendix C.

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

The school 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 five years.

9. Public Interest Test

The school will apply the LA eLIM Public Interest Test (see Appendix B) before any qualified exemptions are applied (see Appendix C). Unless it is in the public interest to withhold information, it will be released.

10. **Charging**

Information published on the school website is free to access, although users may incur costs from their Internet service provider.

Single copies of information covered by the FOIPS are provided free unless stated otherwise. Christ Church will respond to most requests free of charge, and only charge where significant costs are incurred. The school may choose to charge a fee for complying with requests for information under FOI. The fees will be calculated according to FOI Fee Regulations (see Appendix D: Charging), and the person notified of the charge before information is supplied.

The school reserves the right to refuse to supply information where the cost of doing so exceeds the statutory maximum.

11. **Assistance**

Anyone requiring assistance in requesting specific information should contact the School Business Manager.

12. **Feedback**

Anyone wanting to make any comments or suggestions about Christ Church's FOIPS should contact the Chair of Governors.

13. **Complaints**

Anyone wanting to make a complaint should follow the school's normal Complaints Procedures. Please note: the school will maintain records of all complaints received and the outcome of any investigation.

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.

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

Telephone: 0303 123 1113
Email: casework@ico.org.uk
Website: <https://ico.org.uk>

14. **Policy review**

This FOI Policy and associated FOIPS will be reviewed annually.

APPENDIX A: DEALING WITH REQUESTS

In handling a request for information, the delegated person will ask these questions.

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, see the school Data Protection and Information Security Policy.
- *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.
- *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.

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; and
- 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, the school will ask the enquirer to put the request in writing or email, when the request will become subject to the FOIA.

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**.

Information means both hard copy and digital information, including email.

If the school does not hold the information, the school will not 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.

Has the information requested already been made public?

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

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. The delegated person will check with the Headteacher in these circumstances.

Can the school transfer a request to another body?

If the information is held by another public authority, such as your 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.

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.

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. There are more than 20 exemptions. Those that apply to schools are set out in the eLIM FOI Exemptions (Appendix C) and are mainly intended to protect sensitive or confidential information.

Where the school has real concerns about disclosing the information, it will look to see if an exemption applies. If the school feels an exemption applies, it will also check to see if it is within the public interest to release some or all of the data. The eLIM FOI Public Interest Test is set out in Appendix B.

What if the request is for personal information?

Personal information requested by the subject of that information is exempt under the FOIA, as such information is covered by the DPA. The school will inform the enquirer that they should make a “subject access request” under the DPA if they wish to access such information.

What if the details contain personal information?

Personal information requested by third parties is also exempt under the FOIA where release of that information would breach the DPA. 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 DPA, the document may be issued by blanking out the relevant personal information.

How much can we charge?

The school will respond to straightforward enquiries free of charge and charge where the costs are significant according to the details given in eLIM FOI Charging. If there is a charge, the enquirer will be sent a fees notice and the school will not have to comply with the request until the fee has been paid. (See Appendix D.)

Is there a time limit for replying to the enquirer?

Compliance with a request must be prompt and 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 the school has asked the enquirer for more information to enable the school to answer, the 20 days start time begins when this further information has been received.

If a qualified exemption applies and the school needs 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 of Education that normally this should be within 10 working days.

Where the school has 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.

What action is required to refuse a request?

If the information is not to be provided, the person in the school with delegated responsibility for FOI is 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 (see Appendix C);
- 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 (eLIM FOI Charging; see Appendix D);
- 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 (eLIM FOI Public Interest Test; see Appendix B);
- 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 five years. There are no requirements to keep records where you have supplied the information requested.

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.

APPENDIX B: eLIM FOI PUBLIC INTEREST TEST

Background

Having established that a qualified exemption(s) definitely applies to a particular case, the school 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 judgment and a basic knowledge of the subject matter and its wider impact in the school and possibly beyond. 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. the DPA? |
| 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? |

APPENDIX C: EXEMPTIONS

The school will not withhold information in response to a valid request UNLESS one of the following applies:

- an exemption to disclosure, or
- the information sought is not held, or
- the request is considered vexatious or repeated, or
- the cost of compliance exceeds the threshold (see Appendix D: Charging).

The duty to confirm or deny

An enquirer 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 as the “duty to confirm or deny”.

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

1) Absolute: where there is no requirement to confirm or deny that the information is held, disclose the information or consider the public interest, then the following absolute exemptions could apply:

- **Information accessible to the enquirer by other means**
If information is reasonably accessible to the applicant by another route than the Act, it is exempt information. This is the case even if the enquirer would have to pay for the information under that alternative route. This exemption includes cases where you are required to give information under other legislation, or where the information is available via the Publication Scheme.
- **Personal information**
Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the DPA. Consult your existing school data protection guidance.
- **Information provided in confidence**
This relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person.
- **Prohibitions on disclosure**
Information is exempt where its disclosure is prohibited under any other legislation, by order of a court, or where it would constitute a contempt of court, or where it is incompatible with any EU obligation.

2) Qualified: where, even if an exemption applies, there is a duty to consider the public interest in disclosing information. Guidance on carrying out the eLIM FOI Public Interest Test is found in Appendix D.

- **Information intended for future publication**

If at the time the request was made, information is held with a view to publication, then it is exempt from disclosure if it is reasonable that it should not be disclosed until the intended date of publication. This could apply, for instance, to statistics published at set intervals, for example annually, or where information is incomplete and it would be inappropriate to publish prematurely. Remember, you still have a legal duty to provide reasonable advice and assistance.

- **Investigations and proceedings conducted by public authorities**

Information is exempt if it has at any time been held by the school for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.

- **Law enforcement**

Information which is not exempt under investigations and proceedings, may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others:

- the prevention or detection of crime;
- the apprehension or prosecution of offenders;
- the administration of justice;
- the exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, whether circumstances justify regulatory action, ascertaining a person's fitness or competence in relation to their profession, ascertaining the cause of an accident, or protecting or recovering the property of charities;
- any civil proceedings brought by or on behalf of the school which arise out of an investigation carried out for any of the purposes mentioned above.

(The duty to confirm or deny does not arise where prejudice would result to any of these matters.)

- **Communications with the Queen**

Information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household, or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

- **Health and Safety**

Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

- **Environmental information**
Information is exempt under FOI where it is covered by the Environmental Information Regulations. Environmental information can cover information relating to air, water, land, natural sites, built environment, flora and fauna, and health. It also covers all information relating to decisions or activities affecting any of these.
- **Personal information**
Where an individual seeks information about themselves, DPA powers apply. Where the information concerns a third party, it is exempt if its disclosure would contravene the DPA, or the data protection principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the DPA. The duty to confirm or deny does not arise in relation to this information if doing so would be incompatible with any of the above.
- **Legal professional privilege**
Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally, such information will be privileged. A school wishing to disclose the information will need to seek consent from the provider of the advice. This exemption covers all such information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.
- **Commercial interests**
Information is exempt if it constitutes a trade secret or would be likely to prejudice the commercial interests of any person or body (including the school). The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret.

Protective markings and applying exemptions

When considering if an exemption to disclosure should apply, bear in mind that the presence of a protective marking (Restricted, Confidential or Secret, with or without descriptors such as Staff, Management or Commercial) 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, it will be necessary to 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 school will need to ensure that the case has been properly considered, and that the reasons for refusal, or public interest test refusal, are sound.

APPENDIX D: CHARGING

May we charge a fee?

The 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 to a school.* 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 Fees 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 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 multiple requests for the same information are received, it is good practice to include the requested information in the FOIPS.

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”; Appendix E, below), 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.

APPENDIX E: FREEDOM OF INFORMATION FEES NOTICE

(This describes how the charges have been arrived at.)

| TYPE OF CHARGE | DESCRIPTION | BASIS OF CHARGE |
|---------------------------------------|--|--|
| Disbursement cost | Photocopying/printing @ 1p per sheet (black & white) | Actual cost |
| | Photocopying/printing @ 5p per sheet (colour) | Actual cost |
| | Postage | Actual cost of Royal Mail standard 2 nd class |
| Staff costs | Staff costs @ £25 per hour or part thereof | In accordance with Christ Church's FOI Policy |
| Other | The full cost, as incurred | Actual cost |
| Total (Not to exceed £450) | | |

Note: Christ Church C of E First School reserves the right to refuse to supply information where the cost of doing so exceeds the statutory maximum.