



The Robert Carre Trust

Freedom of Information Policy

General

The Robert Carre Trust is aware that its schools have a legal duty to supply certain information to enquirers.

The school will comply with the Freedom of Information Act 2000 and any guidance issued by the Office of the Information Commissioner. The detailed regulations contained within the Freedom of Information Act are complex. This policy document summarises the processes that the school will follow in response to a request under the Act.

These policies are based on the overarching principles set out in the Freedom of Information Act 2000. These are:

The Freedom of Information Act 2000 provides public access to information held by public authorities.

It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities.

The Trust's policy is that:

- an enquirer must be informed whether the Trust holds that information or not, and if it does it must supply the information if it falls within the bounds of the Freedom of Information Act 2000;
- the information must be supplied within 20 working days of the request;
- other information that the Executive Headteacher considers to be of a sensitive nature may also be withheld. In so deciding the Executive Headteacher will consider whether it should be released in the public interest if in withholding the information is greater than the public interest in releasing it;
- the Executive Headteacher will administer the school's process for providing information. In so doing the Executive Headteacher will take into account the Freedom of Information Act 2000 and associated Code of Practice.

Responsibilities

The Executive Headteacher has overall responsibility to the Board for ensuring that the policy is implemented and that the management process is maintained. The Executive Headteacher's PA is responsible for the day-to-day management of the policy.

The Trust's process:

On receipt of a request in writing for information the Executive Headteacher will:

- consider whether the request is for a public interest disclosure or a personal request for information;
- decide whether the request is a request under *Data Protection Act*, *Environmental Information Regulations* or *Freedom Of Information Act*;
- decide whether the Trust holds the information or whether the request should be transferred to another body if the information is held by them;
- inform the enquirer if the information is not held ;
- consider whether a third party’s interests might be affected by disclosure and if so consult them;
- consider whether any exemptions apply and whether they are absolute or qualified;
- carry out a public interest test to decide if applying the qualified exemption outweighs the public interest in disclosing the information;
- decide whether the estimated cost of complying with the request will exceed the appropriate limit (£450 with a maximum of £50 per individual educational record);
- if a request is made for a document that contains exempt personal information ensure that the personal information is removed by applying the redaction procedure; and
- consider whether the request is vexatious or repeated. Where the enquirer is unaware of the impact that the request or requests may have, explain this.
- refer the enquirer to the Information Commissioner’s Office guidance ‘For the Public’ where the enquirer does seem to understand the issues raised by a request;
- give advice and guidance if the enquiry is unclear or too wide to answer.

The Trust recognises its duty to provide advice and assistance to anyone requesting information.

Reasons for not complying with a request

The Trust accepts that according to the legislation there are only four reasons for not complying with a valid request for information under FOI:

1. the information is not held;
2. the cost threshold is reached (£450);
3. the request is considered vexatious or repeated, or
4. one or more of the exemptions apply.

The Trust also recognises that there are over 20 exemptions provided by the FOIA. Those exemptions most likely to apply to a request to the school are:

- a. information accessible by other means;
- b. personal information. A request for personal information is covered by the Data Protection Act (DPA) 1998. Individuals may continue to make a “subject access request” under the DPA – these are where the enquirer asks to see what personal information the school holds about themselves;
- c. environmental information, where information is covered by the Environmental Information Regulations 1992;
- d. commercial interests. Information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person.

Complaints

Expressions of dissatisfaction will be handled through the Trust’s existing Complaints Procedure.

Charging

The governors have resolved to charge for the service.

The charge has been fixed for Education Records at a maximum of £50. An hourly rate is chargeable at £25 per hour for the copying of the records.

Training

Staff involved in the storage and management of the service will receive appropriate training.

Monitoring and review

The Executive Headteacher will monitor the policy in liaison with the Executive Headteacher's PA and will report annually to the Governing Body on the progress of the policy.

The Executive Headteacher will provide information about enquiries in regular reports to the governors.

Appendices

- A Freedom of Information – Checklist for Action on Receipt of a Request for Information
- B Freedom of Information – Points of Law

Reviewed and Ratified at the meeting of the Board on 12 September 2018

Next Review Date: September 2022 (4 years)

Freedom of Information – Checklist for Action on Receipt of a Request for Information

- Decide whether the request is a request under *Data Protection Act*, *Environmental Information Regulations* or *Freedom of Information Act*.
- Decide whether the school holds the information or whether the request should be transferred to another body if the information is held by them.
- Inform the enquirer if the information is not held.
- Consider whether a third party's interests might be affected by disclosure and if so consult them.
- Consider whether any exemptions apply and whether they are absolute or qualified.
- Carry out a public interest test to decide if applying the qualified exemption outweighs the public interest in disclosing the information.
- Decide whether the estimated cost of complying with the request will exceed the appropriate limit (£450 with a maximum of £50 per individual educational record).
- If a request is made for a document that contains exempt personal information ensure that the personal information is removed by applying the redaction procedure.
- Consider whether the request is vexatious or repeated.

Remember

Schools are under a duty to provide advice and assistance to anyone requesting information.

The enquirer is entitled to be told whether the school holds the information (the duty to confirm or deny) except where certain exemptions apply.

A well-managed records and management information system is essential to help schools to meet requests.

Requests should be dealt with within 20 working days (this excludes school holidays).

Wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence. A valid FOI request should be in writing, state the enquirer's name and correspondence address and describe the information requested.

Expressions of dissatisfaction should be handled through the school's existing Complaints Procedure.

Freedom of Information – Points of Law

Contents

- The Act
- Processing
- The Information Commissioner
- Code of Practice
- Action by the school
- Privacy v Right to Know
- Other useful websites

The Act

The Freedom of Information Act 2000 has given further rights to citizens, and duties to schools and other public bodies. The purpose of this Act is to compel public authorities to give access to information about the discharge of their public functions and complements the *Data Protection Act*, which is concerned with data held on individuals.

In January 2005 the general right of access to information came into force for all public authorities. Schools must comply with the provisions.

It does not apply to independent schools, which are not considered to be ‘public authorities’, but it would appear to apply to city academies and city technology colleges.

The Act has not been amended as such since its inception although the *2012 Protection of Freedoms Act* has clarified a range of FOI issues. Schools need to be aware of new regulations covering biometric data and safeguarding vulnerable groups. In particular, the collection and automatic processing of biometric information, including finger identification and iris recognition, is forbidden unless at least one parent has consented and the child has not objected.

Processing

Under the Act anyone who requests a public body (including schools/colleges) for information must be informed whether the organisation holds that information or not, and if it does it must supply the information.

The right is in addition to the existing rights under the data protection legislation, and includes all types of information, whether personal or non-personal information. Schools, colleges and universities are included amongst the public bodies which have these new duties.

Some information of a particularly sensitive nature can be withheld, but even if a disclosure is not required by the law the public authority must consider whether it should be released in the public interest. It can only be withheld if the public interest in withholding it is greater than the public interest in releasing it.

Local authorities are required to establish a publication scheme that sets out how they publish details of the different classes of information they hold, and whether it charges for supplying information. Maintained schools will have to take note of the LA policy and devise their own procedures to comply with it. The Act allows access for information held by schools regardless of when it was created or how long the school has held it.

The Information Commissioner

Under the *Freedom of Information Act 2000* the Data Protection Commissioner became the Information Commissioner with responsibility for both data protection and freedom of information, and for ensuring the implementation of the provisions.

Code of Practice

The *Freedom of Information Act 2000* Code of Practice for the discharge of public authorities' functions, issued under Section 45 (5) of the Act, can be found at <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf> (note that the Ministry of Justice is now responsible for the information)

There is a foreword, which is not legally binding, and a code of practice in six parts:

- I Introduction.
- II The provision of advice and assistance to persons making requests for information.
- III Transferring requests for information.
- IV Consultation with Third Parties.
- V Freedom of Information and confidentiality obligations.
- VI Complaints procedures.

The Freedom of Information (FOI) legislation makes significant changes to the relationship between all public authorities and the information they hold. The Act was intended to be a tool for culture change, reversing the premise that everything is secret unless otherwise stated and moving to a position where everything is public unless it is specifically excepted. There is a presumption that public authorities (which includes all state-funded schools) should make information available unless the information required fits into a limited number of exceptions. There is an obligation for schools to draw the attention of parents, students, staff and governors to the new right. Advice and memoranda are subject to the FOI. It will be important for Headteachers to consider carefully what is put on paper for staff and governors and what is not.

Governors are obliged to issue a list of documents which they intend to publish. This will include policy documents, minutes of governors' meetings and general information about the school.

Exceptions

The majority of exceptions relate to central government functions (e.g. national security) but some relate to schools.

- A document need not be supplied to an enquirer if it is intended to publish it in due course, so, for example, a draft staff restructuring document need not be supplied if it was to be published in a final form.
- There is an exemption from the FOI where data held applies to an individual and is therefore subject to the *Data Protection Act*. A detailed plan of staff restructuring that named individuals would probably be exempt.
- There is an exemption (Section 12) where the cost would be excessive. This is defined as over £450 for a non-governmental public authority such as a school.

Vexatious Requests

A public authority can also refuse a request on the grounds that it is vexatious. This is a complex area and it is better to check with the ICO first. The ICO has issued guidance on the issue. In brief this states:

- The purpose of the exemption is to prevent public resources from being squandered on requests where the disruption or harassment to the authority is disproportionate to the benefit to the public of knowing the information;
- The mere fact that staff are upset by a request does not make it vexatious. The example given in the leading case was of MPs being distressed by details of their misuse of expenses being revealed. This did not justify secrecy. The issue is one of proportion between distress and the importance of the information;
- The test is whether the request is vexatious: not whether the inquirer is;
- However, the school can take into account the past history of requests: e.g. whether the response to one inquiry is likely to produce a vast additional correspondence.

The guidance suggests some 'indicators', which, considered holistically, may justify a refusal on the grounds that a request is vexatious:

- Abusive or aggressive language;
- An excessive burden imposed by making the response;
- Personal grudges;
- Unreasonable persistence;
- Unfounded accusations;
- Intransigence when a decision may already have been made;
- Frequency of overlapping requests;
- An explicitly declared intention to cause difficulty or distress;
- A scattergun approach;
- Disproportionate effort required to respond to an essentially trivial request;
- No obvious intent to obtain the facts;
- Futile requests on matter already subject to investigation and decision;
- Frivolous requests (manifestly 'having a laugh').

Governing Bodies and Headteachers should consider:

- the kind of management system required to facilitate the retrieval of information;
- methods of information management - storing and retrieval of information;
- procedures for meeting requests;
- charging policy;
- training of the staff involved;
- how best to publicise the new service;
- how the school will respond to the increase in demand following an active promotion of the citizen's right to information; and
- when and how to draw staff, students' and parents' attention to the new right.

Privacy v Right to Know

It is not uncommon for enthusiastic journalists to want to follow up national stories by asking for information from schools quoting the Freedom of Information Act. They might, for example, ask for figures on staff absence by gender or exclusion statistics by race.

A 2008 case in Scotland, although it had in fact nothing to do with education as such, suggests that schools should think carefully before complying with journalists' requests. If schools are

confronted with demands for the release of information where 'individuals can readily be identified' they may put themselves and their institutions at risk in law if they release such information. This could easily happen in very small schools, where there is a small racial or ethnic group or youngsters with particular SEN. If unsure, it would be safer to refuse on the grounds of a clash with the *Data Protection Act*.

The House of Lords judgement in the Scottish case, which involved the NHS, made it clear that privacy comes before open government. In other words *the Data Protection Act* takes precedence over Freedom of Information.

The ICO advice suggests that it may be helpful to avoid direct refusal by:

- helping the enquirer to change behaviour by explaining the impact that his/her behaviour is having;
- referring him or her to the ICO guidance @For the Public;
- giving advice on unclear requests so that a more focussed request can be made.

If in doubt, it is always worthwhile ringing the Information Commissioner's Office **0303 123 1113** or **01625 545745**. Their helpline is generally well-informed and helpful. A school that does not like the advice it receives should consult its legal advisers before going its own way.

See also *Called to Account – The Impact of the FOI Act*. NCVO publication available at: http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/uk/ashridge_impact_of_foi_report_nov05.pdf