Garfield Primary

Freedom of Information Act Policy

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By Chair of Governors:

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1 Introduction

1.1 Information is an invaluable asset to any organisation. As a school the School relies on this information in order to carry out statutory and other functions as well as deliver services to all its residents. However, holding this information imposes certain legal obligations which School officers must be aware of so that the school does not fall foul of them. The central legislation that this policy document focuses on is the **Freedom of Information Act 2000** (FOIA 2000) and to a lesser extent **Environmental Information Regulations 2004** (EIR 2004).

1.2 The document provides a framework for School officers to meet legal requirements in relation to information requests that fall within the scope of FOIA or EIR legislation.

1.3 This policy relates to all information held by the School regardless of the format it is held or when it came into the possession of the School. Furthermore, the information does not necessarily have to originate from the School (e.g. it may have originated from another organisation, a contractor or any other third party). The only criterion is that the School, at the time of the request, holds the information or it is held on the School behalf by a third party.

This document sets out the policy framework to assist officers in complying with School's obligation under the Freedom of Information Act (FOIA). It is not intended that this document provides a comprehensive guide as to the legal obligations that apply under the FOIA, and should be read in conjunction with the following references.

Freedom of Information Act 2000
Environmental Information Regulation 2004
Section 45 (Freedom of Information Act) Code of Practice
Guidance published by the Information Commissioner's Office

2 Aim of the Policy

2.1 The aims of this document are to:

- assist school workforce to comply with the law;
- to ensure free and reasonable access to information held by the School;
- promote greater openness;
- provide increased transparency of decision making; and
- build public trust and confidence.

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2.2 These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal privacy, confidentiality and commercial sensitivity where disclosure would not be in the public interest.

3 School's commitment

3.1 The School is committed to openness about the way in which it operates and makes decisions and there will be a presumption in favour of the disclosure of information where ever possible. This policy sets out the general principles that will be adopted by the School in response to requests for information under these statutory access regimes.

4 Roles and responsibilities

4.1 Ultimate accountability for all decisions made relating to Freedom of Information and associated legislation lies with the Governing Body.

4.2 Application of Section 36 exemption (FOIA 2000) can only be sanctioned by the School's **Governing Body**.

4.3 The **Headteacher** is responsible for ensuring that sufficient resources are provided to support the requirements of this policy as well as making strategic level decisions which impact on how the School carries out its obligations under the legislation The School Business Manager is responsible for monitoring compliance within their service area and taking any necessary corrective action.

4.4 The Governing Body monitors, oversees, reports and makes recommendations on all strategic level FOI issues.

4.5 **Data Owners** are the central contact on handling FOIA requests. The Headteacher's PA is responsible for ensuring that the requests are logged on the school database and for monitoring their progress, in particular to monitor adherence to the 20 day statutory limit. When the response is submitted the Headteacher's PA will ensure that the request is closed on the system.

4.6 The School Business Manager provides advice and guidance on legal compliance with FOIA as required including: advising on reviews; reporting on issues and performance; raising awareness and; increasing proficiency in handling FOI requests within the organisation.

4.7 The School Business Manager is responsible for overseeing the handling of the request. The School Business is responsible and

accountable for the information that is or is not provided. If in any doubt as to whether information should be disclosed or not then the **Headteacher** should seek a legal opinion. The **Headteacher** may also be called upon to undertake a review if requested by an applicant. Finally, the **Headteacher** is also responsible for dealing directly with the Information Commissioners Office and assist them as necessary in investigating a complaint made against the school, with the assistance of the Data Protection Officer.

4.8 The Head Teacher has a responsibility to ensure that the schools workforce have undertaken the prescribed corporate FOIA training and have sufficient awareness of the FOIA so that they are able to identify and appropriately process a request. Processing requests could mean simply passing the request to the appropriate officer to deal, contributing, co-ordinating or responding to a request. Handling requests for information is an important frontline service and is everyone's responsibility. The schools workforce will be expected to play their part.

5 Training and Awareness

5.1 It is mandatory that all School staff (including temporary or casual workers) undertake the corporate E-Learning FOIA module. New entrants will be expected to undertake and successfully complete the module within 5 working days of joining the School. Established staff will be expected to undertake and complete refresher training as directed.

5.2 Managers should encourage and make time for their staff to attend any further FOIA training or awareness opportunities that may arise.

5.3 Failure to complete the courses within the prescribed period could result in disciplinary action proceedings.

6 Requests for information

6.1 Different type of Information requests

6.1.1 Not all requests for information are necessarily handled under FOIA/EIR legislation. For instance, requests for personal information, belonging to the applicant themselves, is governed by access rights available under the current data protection law. Also, where information is requested which is of a more routine nature (see examples below) these can be handled as a *business as usual* request and consequently dealt with under the school's procedures for dealing with requests for information. Requests for

information that may fall within the scope of a business as usual request may include but is not limited to the following examples:

Requests for School leaflets, brochures or other publications

School opening times, breaks and term times.

Routine information regarding school services (e.g. class sizes, courses offered or details of instrument lessons available for school aged children attending schools in the borough)

Any other type of information requests that are routinely handled and delivered over the phone.

6.1.2 If in any doubt as to whether the request should be handled under FOIA or "business as usual" it is recommended that you treat under the former to reduce the risk of non-compliance with FOIA.

6.2 Methods of making a request under FOIA

6.2.1 All requests must be made in writing.

6.2.2 However, the legislation does not oblige the requestor to submit the request on-line and the request is acceptable by post by email or fax. The clock (public bodies have 20 working days to respond), will start as soon as the request arrives in the School (and not necessarily from the day the responsible officer receives or reads it). This is why it is essential that there is no delay in handling the request and that it is directed to the School Business Manager as soon as possible. By doing this there is a reduced risk that the request is missed or delayed.

6.2.3 Although requests under FOIA cannot be made verbally the legislation permits environmental information made under EIR to be made in this manner either over the phone or in person. However wherever possible the applicant should be encouraged to make the request in writing.

7 Handling Requests

TBC

7.1 Time limit for responding to a request

7.1.1 Although the School has 20 working days to comply with a request, the school is expected to respond to the request as quickly as is reasonably possible, given the resources available and the complexity of the request.

7.1.2 'Working days' exclude school holidays and 'inset' or training days where the pupils are not present.

7.1.3 In any event the time limit allowed should be seen as an absolute maximum, rather than a target for responding and resources will need to be managed accordingly to ensure that the statutory limit is not breached.

7.1.4 It should be noted that in cases where additional information is sought from the applicant to help locate the information requested, or if a charge notice has been issued (in the event that the charging policy applies), the waiting period is not counted towards the 20 days allowed.

7.1.5 Where a request is transferred from another school to the school (e.g. another school) as it was identified that the School held part, or all of the information requested, the first day of the statutory period will be the first working day after the School receives the transferred request (also see 7.9)

7.2 Contentious or novel requests

7.2.1 As a public body the School has a statutory duty to comply with the Freedom of Information Act and, when responding to a request, provide any information that is held subject to any exemptions that may apply.

7.2.2 If a contentious or novel request, which may be the subject of media interest, is received it should be referred immediately to the Headteacher so that they are aware. The responsibility for dealing with the request remains with the service/s that possesses the information.

7.2.3 The Headteacher should also have sight of the final response before despatch for comment and advice. The School Business Manager will only be able to provide assistance on the phrasing of the response and cannot advise you on the actual content (i.e. the raw information). The substance of the response is determined solely by the request itself; the information that is actually held and any exemptions that may apply.

7.2.4 To assist officers in determining what should be referred to the School Business Manager please see **Appendix 1** for guidance. If in doubt about referring, please seek the advice from the School Business Manager.

7.2.5 If a request subsequently undergoes an appeal, the School Business Manager should be notified and have sight of the appeal response before despatch to the applicant for comment.

7.2.6 When referring a draft response to the School Business Manager please allow up to **2 working days** turnaround time. This will need to be taken into account in meeting the statutory 20 day limit.

7.3 Information required from the Applicant

7.3.1 Information requests are *motive blind*, meaning that the requestor should not be challenged as to the reason for why the information is being asked. The only relevant factors are whether we hold information and whether circumstances exist why the information may not be disclosed (i.e. a statutory exemption is engaged).

7.3.2 The school is only obliged to comply with a request if an applicant makes a request in writing (although request for environmental information under EIR can be made verbally) and provides the following:

a) A **description of the information** so that it can be located. If there is any doubt about what information is being requested the applicant should be asked to clarify their request as soon as possible. School Business Manager should not presume or anticipate what the applicant is requesting.

b) A means by which a response can be communicated to the requestor such as a **postal or email address.**

c) The **applicant's name**. If the applicant only provides the name of an organisation this is also acceptable. There are occasions where applicants may use fictitious or assumed names. If it is suspected that this is the case officers should use their discretion. The real name of an applicant is only usually relevant if for instance personal information is being sought and the identity of the requestor is necessary to ascertain whether they are the data subject or a third party. The true identity of an individual is also necessary if the applicant is using a pseudonym to either circumvent the *appropriate limit* or because the applicant has previously been issued with a vexatious refusal notice. If in doubt legal advice should be sought.

7.4 Appropriate Limit

7.4.1 Where complying with a request would exceed the "appropriate limit", which is set at £450 (or 18 hours) The School Business Manager should advise the applicant that the cost limit applies and provide guidance to the applicant on modifying the request so that the request can be dealt with within the limit.

7.4.2 If Headteacher refuses to comply with the request (as permitted under Section 12 FOIA 2000) because the appropriate limit will be breached, then a note should be made of how the estimate was arrived at. This is so if the refusal is subsequently challenged, there is evidence at hand than an estimate was undertaken and shows that compliance with the request would breach the limit.

7.4.3 The estimate is no more than a rough calculation of the time likely to be taken to comply with the request.

Example
Where to comply with a request requires one or more school staff members to search through 80 separate files or records which on average would take approximately 15 minutes to review each one. Therefore, the total time required to collect the information would be 80 x 15 = 20 hours, which exceeds the appropriate limit of 18 hours.

In this situation before invoking section 12 and refusing the information request, the School Business Manager would be expected to have first engaged with the applicant to explore if at least some information can be provided within the limit.

7.5 **Disbursements**

7.5.1 Under FOIA the School is permitted to make reasonable charge for photocopying, printing and postage costs or disbursements. A charging policy is available on our website on how the School applies these charges.

7.5.2 It should be noted that only the costs of materials can be included in disbursements costs and cannot include staff time.

7.6 **Third Party Consultation**

7.6.1 Some requests under FOIA may require School staff to consult with third parties (e.g. partner agencies and contractors) to consider whether any exemptions apply.

7.6.2 A refusal to consent to the disclosure by a third party is not determinative in whether information is disclosed or otherwise, but such opinion should be considered alongside other relevant factors to make this assessment. The final decision on whether or not to disclose rests solely with the school.

7.6.3 The School will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with an exercise of any of the functions and it would not otherwise be provided. The School will not agree to hold information received from third parties "in confidence" which it believes does not have the necessary quality of confidence.

7.6.4 Potential and existing contractors must be made aware of school obligations with regards to FOIA and EIR and that all information held by the school may be disclosed subject to any relevant exemption that applies.

7.7 Transferring Requests

7.7.1 A request can only be transferred to another public body where the School receives a request for information which it does not hold itself. There may be occasion that the School holds only part of the information in which case the School should respond to that part of the request for which it holds information and transfer the remaining part of the request to the other public body for it to respond separately

7.7.2 Before transferring a request, the School must ensure that the identified public body does indeed hold the information that has been requested. Furthermore, the applicant should be contacted as soon as possible to advise that the School does not hold the information and to seek consent to transferring the request to the public body holding the information. Alternatively the applicant should be advised to contact the public body holding the information directly.

7.7.3 Where information is held on School's behalf by a third party (e.g. a contractor), this is captured by FOIA and the School should respond as if it physically held the information.

7.8 Right of Appeal

7.8.1 In circumstances where information is being withheld in part or completely, a refusal notice must be issued to the applicant which must include references to the right of appeal. Although there is no legal requirement to refer to this right of appeal if supplying all the information as requested, it is good practice to do so.

7.9 Review process

7.9.1 A formal review process must be carried out by the School if requested by the applicant. This may happen where the applicant is unsatisfied about any aspect of how their request was handled (including exceeding the 20 day time limit). Although there is no set time stated for when the review must be completed, the School Business Manager should aim to complete the appeal and respond to the applicant within 20 working days of receiving the written appeal request. If the applicant is still unhappy they may apply to the Information Commissioner to review their case. Full details of the review procedure can be found at **Appendix 3** attached.

8 Disposal and Destruction of information

8.1 FOIA only applies to information that a school holds. Where information is earmarked for disposal, as it is no longer required, there is nothing preventing schools from carrying out these routine records management responsibilities.

8.2 It is illegal under the section 77 of FOIA to wilfully destroy or alter any original documents in order to avoid releasing information. It is important to note that it is the individual that is responsible rather than the public body and carries a fine of up to £5000. Any person found guilty of such an offence will almost certainly face internal disciplinary proceedings and possible dismissal.

8.3 Please also see section 11 below which relates to the retention schedule for FOIA related documents.

9 Publication Scheme

9.1 FOIA requires all schools to adopt the Information Commissioner's Publication Scheme. The scheme:

- sets out the types of information we must routinely publish;
- explains the way we must provide the information;
- states what charges can be sought for providing information; and
- commits the School to providing and maintaining a guide to the information it provides, how it is provided and any charges where they apply.

9.2 The publication scheme facilitates the pro-active release of information and the School's encourages as much information as possible to be released in this way and not just to information prescribed within the publication scheme.

9.3 If new information is published please notify the School Business manager so that the information can be added to the list that records information within the school.

10 Retention Periods for FOIA related documents

The following retention schedule is based on recommended best practice by National Archives and should be adhered to:

Document Description	Retention Period
FOIA Policy and Procedures	10 years after being superseded

FOIA case files (including the initial requests, school response, consideration of application of exemptions and subsequent appeals)	3 years after creation
FOIA requests relating to documents scheduled for destruction	6 months after the last correspondence on the matter

11 Requests To and from Other Schools

11.1 The legislation allows any person or organisation to make a freedom of information request including other schools. In practice this access regime is not commonly used between schools. In a spirit of co-operation schools will normally use less formal avenues to obtain information from each other.

11.2 Therefore, the School Business Manager should avoid wherever possible using the freedom of information access regime to procure information from other organisations and instead use a less formal route in the first instance.

11.3 Similarly, should school staff receive a request from another local authority they may wish to contact the requesting organisation to seek agreement for their request to be handled less formally, perhaps as a school business as usual request. However, the requesting school's agreement is necessary. Unless they do withdraw their freedom of information request it must be handled under the freedom of information regime.

12 Datasets

12.1 From the 1st September 2013, a significant change in the Freedom of Information Act 2000 relating to *Datasets* was implemented. This was put into effect by the introduction of Protection of Freedoms Act 2012. This new legislation amended sections 11 and 19 of the Freedom of Information Act, giving new rights to receive D*atasets* (a category of information that is defined in the new legislation) in a form capable of re-use (e.g. CSV format). For the first time, the Act now gives users the right to re-use datasets, under the terms of a specified

12.2 The changes do not give new rights of access – they are concerned with format and the ability to re-use datasets, once the school has decided that no exemptions or other provisions (e.g. costs, vexatious) in the legislation apply.

12.3 For further information on the new obligations including what the legislation defines as a dataset can be found in Appendix 4 below and also by referring to the Information Commissioner guidance on Datasets and also the new MoJ code of practice.

Appendix 1. **Categories of requests where you should consult the Governing Body**

The following illustrate examples of requests that should be referred to the Governing Body.

a) Requests relating to school expenditure;

b) Requests relating to the number of children in care or receiving services from YOT/YOS/YISP;

c) Requests relating to governors;

d) Requests relating to travel expenses;

e) Requests regarding any legal prosecution with school involvement past, present or future;

f) Requests relating to deceased persons;

h) Requests relating to staff pay

i) Requests relating to agency workers and/or their pay

j) Requests relating to staff sickness absence

Appendix 2. **Re-use of school information and copyright**

Unless otherwise stated, the School owns the copyright in all material on their website and any information contained in responses to request for information made under Freedom of Information or Environmental Information Regulations.

Subject to the following conditions, the School has no objection to organisations reusing its copyright-protected materials (the 'Materials') and reproducing them in their own publications, or on their internal computer networks. Organisations using the School's materials must adhere to the following criteria:

- Any publication or internal network which incorporates the School Materials must include an acknowledgement of the source of such materials.

- The Material must be clearly separated from any comment made on it by the organisation or others.

- Readers of the Material must not be given the impression that the School is responsible for, or has in any way approved, the publication or network in which his Materials are reproduced.

- The Materials may not be altered or amended unless such material is clearly marked as altered or amended by the organisation or others.

- No fee may be charged by any organisation reproducing the School's Materials in respect of reproducing Materials.

- When reproducing the School's Materials, organisations must have regard to any qualifying statements or descriptions attached to the Materials, (for example, descriptions such as 'consultation document', are important as are statements concerning the audience at which the Material is directed). If the Material is reproduced in full, or substantial extracts are reproduced, any qualifying statements attached to the Material must be included.

- There is no charge for the reproduction of Materials made in accordance with these conditions.

The Re-use of Public Sector Information Regulations 2005 provided a framework for deciding issues relating to the re-use of information held by public bodies. Subject to the conditions set out above, the School has no objection to organisations reproducing the Materials made available.

Where an organisation wishes to re-use the School's Materials, but the proposed re-use would contravene any of the conditions set out above, the

organisation should contact the School Business Manager to determine whether the proposed re-use would be permitted and what, of any, additional conditions may apply. The application should be in writing, specifying name and address of the applicant, identifying the documents to be re-used and the purpose for re-use.
If an individual or organisation is unhappy with the manner in which an application for the reproduction or the re-use of the School's Materials has been handled by the school, a complaint should be made in writing to the school.

Appendix 3. **Internal Review Procedure**

This process relates to the FOIA Internal Review Procedure.

1. In all cases where a Freedom of Information (FOI) response is made to a request received, the response must contain the following statement, or words to a similar effect:

   "If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. If so, you should email or write to me to ask for an internal review to be carried out. The review will be carried out by a senior manager within the School, who will advise you directly of the outcome of the review. If you are still dissatisfied, you may ask the Information Commissioner's Office to consider your complaint. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to [Responding officer]:

   If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF."

2. On receipt of a request for a review of the response, the original responding officer, referred to hereafter as the *Responding Officer,* should consider the detail of the review and re-evaluate the basis of the response as appropriate. In doing so, the Responding Officer may wish to take advice from the legal.

3. If the Responding Officer, on reflection considers that the request for the review is reasonable and that further disclosure is merited, they should respond accordingly.

4. If after deliberation the Responding Officer does not consider the grounds of the appeal to be reasonable, they should arrange for a senior manager (senior to the original responding officer) to undertake a review and is referred to hereafter as the Review Manager. The Responding Officer should pass the Review Manager all the relevant correspondence (e.g. the request for information, the response and any other communications relating to the request) as well as the disputed information.

5. The applicant should be given an estimate as soon as possible after the request for an appeal has been received, of the time the review is likely to take. The Reviewing Manager should aim to complete their review and respond within 20 working days. Where there is delay in the review the applicant should be informed and advised of the revised response time.

6. The School Business Manager may, if they feel it appropriate, request that the review response is considered by the Data Protection Officer prior to being sent out.

7. Once the School Business Manager has completed the review they should respond as appropriate. If the appeal is upheld then a disclosure of the disputed information should be given to the applicant. However if the appeal is only partially upheld or if the original decision is maintained then a full explanation as possible should be provided to the applicant and any additional disclosure as appropriate.

8. If the review relates to a procedural matter and it was shown that the school did not follow its procedures an apology should be offered to the applicant. Steps should also be taken to ensure that the occurrence is not repeated.

9. The School Business Manager should send a copy of their response to the Responding Officer for their information.

10. Full details of all steps taken must be recorded (e.g. the reasoning and logic behind the response, the steps taken to review, etc.) in lieu of any appeal to the Information Commissioner's Office.

11. All requests for a review of a data protection issue, whether made by an individual or the Information Commissioner's Office, should be passed to the School's Data Protection Officer.

Appendix 4. **Handling a request involving a *Dataset***

The introduction of Protection of Freedoms Act 2012 on the statute book has amended the Freedom of Information Act 2000 (FOIA) to the effect that the school has further obligations when dealing with requests for information involving a "Dataset" and you must be aware of these obligations when handling requests. The new provision came into force on 1st September 2013. This fact sheet and the Q&A is designed to assist in understanding these responsibilities and should be read in conjunction with the Freedom of Information Act Section 45 Code of Practice relating to Datasets and with the Information Commissioners guidance on handling information requests involving Datasets.

The change to FOIA is but a part of a wider Government initiative to increase transparency of public bodies and ensure public authorities proactively release data in a way that allows businesses, and other enterprises to re-use it for both non-commercial and commercial purposes.

Fundamentally the Protection of Freedoms Act, amends FOIA so that schools are obliged to release datasets in a re-usable electronic format.
So that the School complies with this new obligation it is important that staff dealing with request have an appreciation of what exactly a Dataset is. This is because this new provision will only be applicable to information which meets the definition of a **Dataset**.

So what exactly constitutes a **Dataset**? A dataset is a collection of information held in electronic form where all or most of the information meets the following criteria:

- It has been obtained or recorded for the purpose of providing a school with information in connection with the provision of a service y or the carrying out of any other function;

- It is factual information which:

  a) is not the product of interpretation or analysis other than calculation (i.e. it is the raw data) and
  b) is not an official statistic as defined by the Statistics and Registration Service Act 2007

- It remains in a form that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.

The last criterion is important to understand. It essentially means that any Dataset which have had some value added to them or which have been

materially altered, by way of analysis, representation or application of some technical manipulation, would fall outside the legal definition.

Typical examples of a dataset could be:

- Postcodes
- List of School owned assets
- Staff sickness statistics
- Balance sheet showing receipts and spend
- Demographic statistics of residents receiving a particular service
- Approval rating for School services or functions
- Organisation structure charts

The above list is no way exhaustive and is merely serves to indicate what types of information the definition will capture. It would not be feasible here to provide a definitive list of what information may constitute a Dataset because of the diversity of information that may be collected and requested. School staff should if in doubt seek advice either from their respective information co-ordinators or from the School Business Manager for an opinion about whether the information constitutes a Dataset.

Communication of information electronically in a re-usable form
The new obligation will mean that any request for information that constitutes a Dataset must be released in an electronic and re-usable form. Until the implementation of the new provision applicants have been able to state their preference as to whether the information is provided to them electronically or in manual form and as long as it was reasonable to do so the school were required to comply with that preference.

However the amendment will now mean that in future where a request is made for information that is held by a school which constitutes a dataset, or which forms part of a dataset, and the applicant requests that information be sent to them in an electronic form, then the school must, so far as is reasonably practicable, provide the information to the applicant in an electronic form that is capable of re-use. In effect this means that the information should be provided in a machine-readable form using open standards which permits unrestricted re-use and manipulation of the information. This will effectively prevent the school from providing such information in a format incapable of manipulation (e.g. PDF format) but instead to provide the information in an open format (e.g. Character Separated Value or CSV format).

However it should be noted that this is obligation is qualified in that the School would only be required to provide the information in a re-usable format unless it was unreasonable to do so with regards to any technical or financial considerations. Although the expectation is that in the vast majority of cases the School will comply with this obligation.

Re Use of Copyright Works

As part of the new provision schools when communicating a Dataset to an applicant in response to an FOI request and all or part of the dataset contains a relevant copyright work, then school must make the copyright work available for re-use in accordance with the terms of the specified license.

So what exactly is a “relevant copyright work”? This is a legal term defined by the Copyright Designs and Patents Act 1998, and in this context relates to a product such as a report, collection of information or database that is created by the relevant copyright work owner (e.g. the School). This ownership allows the owner to control how their product is re-used after dissemination to a third party. In the context of Freedom of Information request the existence of a relevant copyright work does not impact on whether the information is made available to the requestor (the availability issue depends on whether an exemption is available on which the council can rely on to withhold information) but instead on ability of the requestor to re-use the information once it is in their possession. What the new provision will do in the majority of cases is remove the re-use restrictions of what a third party (e.g. the information requestor) may do with that information once they have it.

Information captured by this provision must meet the following criteria:

a) the person must have made a request for a dataset
b) the dataset requested includes a ‘relevant copyright work’
c) that the School
d) is the only owner of the ‘relevant copyright work’ (in other words that it is not owned in whole or part by a third party); and
e) that the school is communicating the relevant copyright work to the requester under the FOIA (in other words it is not being withheld under one of the exemptions).

When providing a Dataset, in response to a request for information under FOIA, under the new provisions of the Act, the School must make that work available for re-use in accordance with the terms of one of the specified licences (see below). In practice when providing a Dataset in response to a request under FOIA reference will be required to the appropriate license. It is expected that the vast majority of cases the School will make use the UK Open Government Licence as most datasets should be available without a charge or restrictions. It is expected that only in a few exceptional cases will alternative licenses be used.

A description of the licenses that will be available for use in this context are described below.

- **UK Open Government Licence**: The Open Government Licence is the main licensing model for the UK Government. And it encourages the use and re-use of a wide range of public sector information. The Open Government Licence is a non-transactional open licence which enables use and re-use with virtually no restrictions. It permits use and re-use, including for commercial purposes, at no cost to the user/re-user. The Licence can be easily used by public authorities, for example, it only

requires public authorities to link to the Open Government Licence which is hosted on The National Archives website http://www.nationalarchives.gov.uk/doc/open-government-licence

- **Non- Commercial Government Licence:** It is recognised, however, that the Open Government Licence will not be appropriate in all cases, for example, in circumstances where information may only be used for non-commercial purposes. As with the Open Government License above the license can be access through the National Archives website at http://www.nationalarchives.gov.uk/doc/non-commercial-government-licence/

- **Charged Licence (Beta):** If re-use for commercial purposes which involves payment of a fee and/or royalties by the re-user is required, a transactional licence may be used. The licence uses standard licensing terms and forms part of the UK Government Licensing Framework and is available on the National Archives website http://www.nationalarchives.gov.uk/information-management/government-licensing/charged-licence.htm .(It should be noted that the version of the license is a prototype and is currently open to consultation).

Publication of Datasets through the Publication Scheme

On disclosure of a Dataset in response to a FOIA request there is a new requirement that obliges the public authority to publish this information and keep it up to date in accordance with the Publication Scheme. Datasets that are published in this way should be in an electronic format that is capable of re-use and any relevant copyright work within it will have to be made available for re-use in accordance with the terms of the specified licence (referred to above) as in the case of Datasets made available in response to requests under FOIA.

These provisions only apply to Datasets which have been requested and do not extend to Datasets that the school may collect or hold but have not been subject to a formal request under FOIA.

There is an exception to the publication requirement and that is where the public authority is satisfied that it is not appropriate for the dataset to be published. This maybe because the information is of limited value or interest to the wider public.

Other considerations

As already referred to above, the new provisions make no changes to the statutory exemptions available to public authorities under Part II of FOIA to withhold information. In other words, if the information requested involves a Dataset which is covered by an exemption then the School can still rely on the exemption to withhold the information and the new provisions do not then come into play. It is important to remember that the new provision outlined above have no consequence to the right of access available under FOIA. The changes relate only to the form in which the information is to be provided (e.g. in an open format capable of manipulation) and the facility for re-using the information by the requestor where it relates to information constituting a Dataset.

Similarly, the new provision puts no onus on schools to create new information when none existed before. As with any other FOIA request the obligation is to information already in the possession of the school at the time the request is made.

Generally speaking the vast majority of information will allow for liberal re-use of the information without charge to the third party. However, the legislation does potentially permit schools to use alternative licensing arrangements that could require the applicant to pay a fee. It should be remembered however that the payment in this case is for re-use and not access. It is important to stress that the school cannot refuse disclosure on the basis that it has not received the required fee for re-use where applicable.

The Secretary of State has issued regulations on the charging for re-use of information. These are contained in Freedom of Information (Release of Datasets for Re-use) (Fees) Regulations 2013. Any fees that are charged in relation to reuse of information must be in accordance with these regulations. Alternatively, there is nothing to prevent a school to charge for re-use of information if existing legislation is available to permit this.

The School Business Manager should be aware that the new provisions amending the FOIA will be regulated by the Information Commissioner (ICO). Any complaints received from applicants about failure to comply with these new provisions outlined above must be handled under the internal review procedures in exactly the same way as standard FOIA complaints have been handled. The requestor if dissatisfied with the outcome of the internal review may seek recourse from the ICO.

These provisions only apply to requests falling under FOIA 2000 and therefore does not apply to information requests under Environmental Information Regulations (EIR) 2004.

Changes to Freedom Of Information Act 2000 – Q&A

What has changed?
The change relate to the way we must comply with our obligations in providing certain kinds of information under the Freedom of Information Act (FOIA) 2000. Specifically it relates to information defined as a Dataset. The changes have no affect to information that does not constitute a Dataset.

How has this change come about?
The changes to FOIA 2000 were made law with the passing of the Protection of Freedoms Act (PoFA) 2012.

Why has this change come about?
This is but part of a wider government initiative to make information held by public authorities/schools not only more transparent but to allow both commercial and

non-commercial organisations to exploit publicly held information for the benefit of the wider economy.

What is a Dataset?

It is important to understand what the term "Dataset" means as the new provisions referred to in this document will only apply to information falling within the scope of the definition.

*A Dataset will have **all** the following attributes:*

a) *Information that was collected in connection with the provision of a service or carrying out a function;*
b) *it is factual information (but not the product of interpretation or analysis; neither is it an official statistic) and*
c) *has not been altered or manipulated since it was collected.*

What is an example of a Dataset?

The legislation does not provide a definitive list but the kinds of information that may fall within the scope of the definition include:

- *Property postcodes*
- *List of council assets*
- *Receipts and spend information*
- *Resident satisfaction ratings*
- *Number of disabled parking bays in a geographic district*

When did the changes take effect?

1st September 2013

What are the new obligations?

When providing information in response to a request under FOIA that meets the definition of a Dataset the information must be:

a) *provided in a machine readable, open format (e.g. CSV format).*
b) *Information containing copyright works will require a specified license to be issued which sets out the conditions for the re-use of the information*

What is a copyright works?

This relates to information where the copyright is owned wholly or in part with a third party. Where the works is owned wholly by the school then the school can provide the information with a specified.
However if the copyright to the information is co-owned or owned exclusively by a third party then permission would need to be sought from the third party in regards to any intentions for re-use of that information (Remember this is permission about re-use and not disclosure!)

Do the changes effect information that are exempt under FOIA?

No. If requested information is exempt under one of the statutory exemption (e.g. Section 40 – Personal Information) then the information can still be withheld by

citing the relevant exemptions. The changes only apply to information we intend to disclose or publish.

Do the changes apply to Environmental Information?
No

If you have any questions about the new provisions, contact legal services.