Lenham Primary School

Take Pride; Be Proud

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Freedom Of Information Act Policy

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Freedom of Information Act (FOIA) Policy

1. Introduction

Lenham Primary School is committed to the Freedom of Information Act 2000 and to the principles of accountability and the general right of access to information, subject to legal exemptions. This policy outlines our response to the Act and a framework for managing requests.

2. Background

The Freedom of Information Act 2000 (FOIA) came fully into force on January 1 2005. Under the Act, any person has a legal right to ask for access to information held by the school. They are entitled to be told whether the school holds the information, and to receive a copy, subject to certain exemptions.

The information which the school routinely makes available to the public is included in the Publication Scheme. Requests for other information should be dealt with in accordance with the statutory guidance. While the Act assumes openness, it recognises that certain information is sensitive. There are exemptions to protect this information.

The Act is fully retrospective, so that any past records which the school holds are covered by the Act. The DfES has issued a Retention Schedule produced by the Records Management Society of Great Britain, to guide schools on how long they should keep school records. It is an offence to wilfully conceal, damage or destroy information in order to avoid responding to an enquiry, so it is important that no records that are the subject of an enquiry are amended or destroyed.

Requests under FOIA can be addressed to anyone in the school; so all staff need to be aware of the process for dealing with requests. Requests must be made in writing, (including email), and should include the enquirers name and correspondence address, and state what information they require. They do not have to mention the Act, nor do they have to say why they want the information. There is a duty to respond to all requests, telling the enquirer whether or not the information is held, and supplying any information that is held, except where exemptions apply. There is no need to collect data in specific response to a FOIA enquiry. There is a time limit of 20 days excluding school holidays for responding to the request.

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

3. Scope

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

Requests for personal data are still covered by the Data Protection Act. (DPA). Individuals can request to see what information the school holds about them. This is known as a Subject Access Request, and must be dealt with accordingly.

Requests for information about anything relating to the environment – such as air, water, land, the natural world or the built environment and any factor or measure affecting these – are covered by the Environmental Information Regulations (EIR). They also cover issues relating to Health and Safety. For example queries about chemicals used in the school or on school land, phone masts, car parks etc. would all be covered by the EIR. Requests under EIR are dealt with in the same way as those under FOIA, but unlike FOIA requests, they do not need to be written and can be verbal.

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

4. Obligations and Duties

The school recognises its duty to:

- provide advice and assistance to anyone requesting information. *We will respond to straightforward verbal requests for information, and will help enquirers to put more complex verbal requests into writing so that they can be handled under the Act.*
- tell enquirers whether or not we hold the information they are requesting (the duty to confirm or deny), and provide access to the information we hold in accordance with the procedures laid down in Appendix 1.

5. Publication Scheme

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

6. Dealing with Requests

We will respond to all requests in accordance with the procedures laid down in Appendix 1.

We will ensure that all staff are aware of the procedures.

7. Exemptions

Certain information is subject to either absolute or qualified exemptions. The exemptions are listed in Appendix 2.

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

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

8. Public Interest Test

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

For information on applying the Public Interest Test see Appendix 3.

9. Charging

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

The Governing Body may choose to charge a fee for complying with requests for information under the FOIA. The fees must be calculated according to FOIA regulations and the person notified of the charge before information is supplied. It is recommended that schools respond to most requests free of charge, and only charge where significant costs are incurred.

10. Responsibilities

The Governing Body has delegated the day-to-day responsibility for compliance with the FOIA to the Headteacher.

11. Complaints

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

Appeals should be made in writing to the Information Commissioner's office. They can be contacted at:

https://www.gov.uk/guidance/information-rights-appeal-against-the-commissioners-decision

Appendix 1: Procedure for Dealing with Requests

Note: This Appendix is adapted from the DfES Guide for Maintained Schools on Full Implementation from January 2005, with the exception of paras 17 – 21 which have been changed to reflect amended guidance.

1. To handle a request for information the governing body or delegated person will need to ask themselves a series of questions. These are set out below and shown on pages 12 - 13 as process maps.

Is it a FOI request for information?

2. A request for information may be covered by one, or all, of three information rights:
   - *Data Protection enquiries* (or subject access requests) are ones where the enquirer asks to see what personal information the school holds about the enquirer. If the enquiry is a Data Protection request, follow your existing school DPA guidance.
   - *Environmental Information Regulations enquiries* are ones which relate to air, water, land, natural sites, built environment, flora and fauna, and health, and any decisions and activities affecting any of these. These could therefore include enquiries about recycling, phone masts, school playing fields, car parking etc. If the enquiry is about environmental information, follow the guidance on the IC's website.
   - *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?

3. 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[1]; and
   - not be covered by one of the other pieces of legislation.

4. 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, you should ask the enquirer to put the request in writing or email, when the request will become subject to FOI.

Does the school hold the information?

5. "Holding" information means information relating to the business of the school:

[1] In cases where the enquiry is ambiguous assist the enquirer to describe more clearly the information requested. Where possible, establish direct contact. The aim is to clarify the nature of the information requested and not to determine the aims or motivation of the enquirer. If you notify the enquirer that you need further information to enable you to answer, you do not have to deal with the request until the further information is received. The response time limit starts from the date this is received.

- the school has **created**, or
- the school has **received from another** body or person, or
- **held by another** body **on** the **school's behalf**.

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

7. If the school does not hold the information, you do not have to create or acquire it just to answer the enquiry, although a reasonable search should be made before denying that you have got information the school might be expected to hold.

Has the information requested already been made public?

8. If the information requested is already in the public domain, for instance through your 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?

9. 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[2]. This however does not provide an excuse for bad records management.

Can the school transfer a request to another body?

10. 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.

[2] It is not intended to include otherwise valid requests in which the applicant may make complaints or vent frustrations. In addition, you do not have to comply with repeated identical or substantially similar requests from the same applicant unless a "reasonable" interval has elapsed between requests.

Appendix 2 : Exemptions

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

1. Although decisions on disclosure should be made on a presumption of openness, the FOIA recognises the need to preserve confidentiality and protect sensitive material in some circumstances.

2. You cannot 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.

The duty to confirm or deny

3. A person 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 school's "duty to confirm or deny" that it holds the information. However, the school does not have to confirm or deny if:-

   - the exemption is an absolute exemption (see paragraph 6), or
   - in the case of qualified exemptions (see paragraph 8), confirming or denying would itself disclose exempted information

Exemptions

4. A series of exemptions are set out in the Act which allow the withholding of information in relation to an enquiry. Some are very specialised in their application (such as national security) and would not usually be relevant to schools. There are more than 20 exemptions but schools are likely to use only a few of them.

5. There are two general categories of exemptions:-

   Absolute: where there is no requirement to confirm or deny that the information is held, disclose the information or consider the public interest; and

   Qualified: where, even if an exemption applies, there is a duty to consider the public interest in disclosing information

What are the Absolute Exemptions?

6. There are 8 absolute exemptions listed in the Act. Even where an absolute exemption applies:-

   - it does not mean that you can't disclose in all cases; it means that disclosure is not required by the Act. A decision could be taken to ignore the exemption and release the information taking into account all the facts of the case

- there is still a legal obligation to provide reasonable advice and assistance to the enquirer

7. The absolute exemptions in the Act are set out below. **Those which might be relevant to schools are marked with an *:**

7.1 **Information accessible to the enquirer by other means*** (Section 21)
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.

7.2 **Information dealing with security matters** (Section 23) (see also qualified exemption under Section 24 on national security)
This applies to information directly or indirectly supplied by, or relating to, bodies dealing with security matters such as GCHQ, MI5, MI6, Special Forces and the National Criminal Intelligence Service.

7.3 **Court records** (Section 32) – (see also the qualified exemption under Section 30 concerning investigations and proceedings conducted by public authorities)
This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.

7.4 **Parliamentary Privilege** (Section 34)
This exempts information if it is required for the purpose of avoiding an infringement of the Parliamentary privilege. Parliamentary privilege is an immunity whereby MPs cannot be prosecuted for sedition or sued for libel or slander over anything said during proceedings in the House.

7.5 **Prejudice to the effective conduct of public affairs** (Section 36) - see also the qualified exemption part of Section 36
This relates to the maintenance of the collective responsibility of Ministers.

7.6 **Personal information*** (Section 40) - see also the qualified exemption part of Section 40. Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act. Consult your existing school Data Protection guidance.

7.7 **Information provided in confidence*** (Section 41)
This relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person.

7.8 **Prohibitions on disclosure*** (Section 44)
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 EC obligation.

8: What are the Qualified Exemptions?

With qualified exemptions, even if it is decided that an exemption applies, there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing information. Guidance on carrying out the public interest test is in Appendix 3.

The qualified exemptions in the Act are set out below. **Those which might be relevant to schools are marked with an *:**

8.1 **Information intended for future publication*** (Section 22)
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[3]. Remember, you still have a legal duty to provide reasonable advice and assistance.

8.2 **National security** (Section 24**)** (see also absolute exemption 23)
Information is exempt for the purposes of safeguarding national security.

8.3 **Defence** (Section 26)
Information is exempt if its disclosure would prejudice the defence of the UK.

8.4 **International relations** (Section 27)
Information is exempt if its disclosure would or would be likely to, prejudice relations between the UK and any other state, international organisation.

8.5 **Relations within UK** (Section 28**)**
Information is exempt if its disclosure would or would be likely to, prejudice relations between any administrations in the UK i.e. the Government, Scottish Administration, Northern Ireland Assembly, or National Assembly of Wales.

8.6 **The economy** (Section 29)
Information is exempt if its disclosure would, or would be likely to, prejudice the economic or financial interests of the UK

8.7 **Investigations and proceedings conducted by public authorities*** (Section 30)
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.

8.8 **Law enforcement*** (Section 31)
Information which is not exempt under Section 30 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,

[3] Note the following:-
- the intended publication does not have to be by the school, it can be by another person or body on behalf of the school
- the date of publication does not have to be known, it could be at some future date (although it is recommended that some idea of a likely date is given)
- the duty to confirm or deny does not apply if to do so would involve the disclosure of any of the relevant information

ascertaining a person's fitness or competence in relation to their profession, ascertaining the cause of an accident or protecting or recovering charities or its properties

- 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.

8.9 **Audit Functions** (Section 33)
Information is exempt if its disclosure would, or would be likely to, prejudice the exercise of an authority's functions in relation to the audit of the accounts of other public authorities. It does not apply to internal audit reports.

8.10 Formulation of government policy (Section 35)
Information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (eg Attorney General) and the operation of any Ministerial private office

8.11 **Prejudice to the conduct of public affairs** (Section 36) (excluding matters covered by the absolute exemption part of Section 36)
Information likely to prejudice the maintenance of the convention of the collective responsibility of Ministers or likely to inhibit the free and frank provision of advice or exchange of views

8.12 **Communications with the Queen*** (Section 37)
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.

8.13 **Health and Safety*** (Section 38)
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.

8.14 **Environmental information*** (Section 39)
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.

8.15 **Personal information*** (Section 40) – see also the absolute exemption part of Section 40 Where an individual seeks information about themselves Data Protection Act powers apply.
Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act, 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 Data Protection Act. 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.

8.16 **Legal professional privilege*** (Section 42)
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.

8.17 **Commercial interests*** (Section 43)
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

9. 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, Commercial etc) 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

10. 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

11. In all cases, before writing to the enquirer, the person given responsibility for FOI by the school governing body 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 3 : Applying the Public Interest Test

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

Background

1. Having established that a qualified exemption(s) definitely applies to a particular case, you must then carry out a public interest test to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. Therefore, unless it is in the public interest to withhold the information, it has to be released. Although precedent and a developed case law will play a part, individual circumstances will vary and each case will need to be considered on its own merits.

Carrying out the test

2. It is worth noting that what is in the public interest is not necessarily the same as that which may be of interest to the public. It may be irrelevant that a matter may be the subject of public curiosity. In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one. Applying such a test depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in the school and possibly wider. Factors that might be taken into account when weighing the public interest include:-

For Disclosure	Against Disclosure
Is disclosure likely to increase access to information held by the school?	Is disclosure likely to distort public reporting or be misleading because it is incomplete?
Is disclosure likely to give the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions?	Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving?
Is disclosure likely to improve the accountability and transparency of the school in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm or confusion?
Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy?	Is disclosure likely to seriously jeopardise the school's legal or contractual position?
Is disclosure likely to increase public participation in decision-making?	Is disclosure likely to infringe other legislation e.g. Data Protection Act?
Is disclosure likely to increase public participation in political processes in general?	Is disclosure likely to create a controversial precedent on the release of information or impair your ability to obtain information in the future?
Is disclosure likely to bring to light information affecting public safety?	Is disclosure likely to adversely affect the school's proper functioning and discourage openness in expressing opinions?
Is disclosure likely to reduce further enquiries on the topic?	If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any

	useful purpose?

3. Note also that:

- potential or actual embarrassment to, or loss of confidence in, the school, staff or governors is NOT a valid factor
- the fact that the information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information
- the potential harm of releasing information will reduce over time and should be considered at the time the request is made rather than by reference to when the relevant decision was originally taken
- the balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but on certain higher order considerations such as the need to preserve confidentiality of internal discussions
- a decision not to release information may be perverse i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party?

4. You will need to record the answers to these questions and the reasons for those answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. You need to decide how important each factor is in the circumstances and go on to make an overall assessment.

For Disclosure

5. Where the balance of the public interest lies in disclosure, the enquiry should be dealt with and the information required should be made available. Where the factors are equally-balanced, the decision should usually favour disclosure (but see 3rd bullet point above).

Against Disclosure

6. After carrying out the public interest test if it is decided that the exemption should still apply, proceed to reply to the request.

There will be occasions when it has been decided that a qualified exemption applies but consideration of the public interest test may take longer. In such a case, you must contact the enquirer within 20 working days stating that a particular exemption applies, but including an estimate of the date by which a decision on the public interest test will be made. This should be within a “reasonable” time – in practice, it is recommended this decision is made and communicated within the 20 days but where not possible it is suggested that no more than 10 working days beyond the 20 days should be allowed.