

ST. ILLTYD'S CATHOLIC HIGH SCHOOL FREEDOM OF INFORMATION POLICY

Freedom of Information Policy

1. Introduction

St Illtyd's Catholic High 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 in place to protect this information.

The Act is fully retrospective, so that any past records which the school holds are covered by the Act. The school follows a Retention Schedule produced by the Records Management Society of Great Britain, which guides 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 an FoIA enquiry. There is a time limit of 20 working days (excluding school holidays) for responding to the request.

3. Scope

The FoI Act joins the Data Protection Act 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

St Illtyd's Catholic High School has adopted the Model Publication Scheme for Schools approved by the Information Commissioner.

The Publication Scheme and the materials it covers will be readily available from the School office. It will also be published on our website www.stiltyds.org.uk

6. Dealing with Requests

The school will respond to all requests in accordance with the procedures laid down in Appendix A.

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 B.

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 C.

9. Charging

We reserve the right to refuse to supply information where the cost of doing so exceeds the statutory maximum, currently £450. The enquirer will be contacted to see if they wish to pay for the costs of supplying the information, or if they wish to reduce the request, and therefore bring the cost under the statutory maximum.

10. Responsibilities

The day to day responsibility for compliance with the FoIA rests with the Headteacher. The School Business Manager will act to coordinate enquiries received and provide a point of reference for advice and training.

11. Complaints

Any comments or complaints will be dealt with through the school's normal complaints procedure, which is outlined on the school's website.

We will aim to determine all complaints within 20 working days of receipt. We will publish information on our success rate in meeting this target. The school will maintain records of all complaints and their outcome.

If on investigation the school's original decision is upheld, then the school has a duty to inform the complainant of their right to appeal to the Information Commissioner's office.

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

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

Appendix A – Procedure for Dealing with Requests

A1 - Verbal Requests

If information is sought by telephone or in person, judge if the request is simple enough to deal with on the spot. If so, then the information should be provided immediately. If the request is more complex, then it should be put in writing and subject to a formal Fol disclosure request.

A2 - Written Requests

Check that the information is held by the school. If not, then the enquirer must be informed where the information can be obtained from.

If the request is for the enquirer's own personal information, then it should be treated as a Subject Access Request under the Data Protection Act.

If the request is regarding environmental issues, it should be completed under the Environmental Information Regulations.

If it does not fall under the above headings, then it is a Fol request. The request should be passed to the Headteacher or the School Business Manager, who will log the request and obtain a reference number for all future correspondence relating to the disclosure.

If the information is already in the public domain, then the enquirer should be provided with a copy or directed to where it can be obtained.

If there are concerns with releasing the information, then the responsible person will check to see if any of the exemptions outlined in Appendix B apply. In the case of an absolute exemption, then the request will be refused. In the case of a possible qualified exemption, the public interest test will be carried out. If this recommends a refusal to disclose, then a refusal letter will be issued to the enquirer. The refusal will include:

- the fact that the responsible person cannot provide the information requested
- which exemptions we are applying
- why the exemptions apply to this enquiry
- in the case of qualified exemptions, how the public interest test has been applied, specifying the factors taken into account in coming to a decision.

The request, exemptions applied and public interest test results will be logged and recorded for a period of no less than 5 years where the information has been refused, should the enquirer decide to appeal to the Information Commissioner.

If the cost of providing the information will exceed the limit as prescribed in the FoIA, then the enquirer should be asked if they wish to pay the fee to obtain the information or reduce the request. Whilst waiting for a response from the enquirer, the time limit will be suspended until a response has been received.

Where there are no concerns and no costs involved, then the information will be gathered by the person co-ordinating the request and sent to the enquirer. The covering letter should state the Fol request reference number, should the enquirer need to contact the school for any supplementary information related to the request.

As a school, we aim to respond to all Fol requests as soon as possible. However, in all cases we will meet the 20 working day deadline for responding to the enquirer. This time limit does not include school holiday periods. The time taken to respond to each Fol request will be recorded by the school.

Appendix B – Exemptions to Release of Information

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.

The school 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 (see Appendix B)

B1 - The duty to confirm or deny

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, or
- in the case of qualified exemptions, confirming or denying would itself disclose exempted information

B2 - Exemptions

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 the school is only likely to use only a few of them.

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

B3 - Absolute Exemptions

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

- it does not mean that the school 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.

The 4 absolute exemptions in the Act that would apply to us as a school are set out below.

B3.1 - 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.

B3.2 - Personal information (Section 40)

Where enquirers ask to see information about them, this is exempt under the Act because it is covered by the Data Protection Act.

B3.3 - 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.

B3.4 - 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.

B4 – 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. Advice on the public interest test is at Appendix B.

There are 18 qualified exemptions contained within the Act. The 11 that could apply to the school are set out below.

B4.1 - Information available by other means* (Section 21)

Information is exempt from the right of access under the Freedom of Information Act if that information is reasonably accessible to the applicant by other means.

Public authorities should also use publication schemes to place information in the public domain proactively. If information has already been made available in a publication scheme, then it will be exempt under section 21.

B4.2 - 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 prematurely¹¹. Remember, you still have a legal duty to provide reasonable advice and assistance.

B4.3 - Investigations and proceedings conducted by public authorities* (Section 30)

Information is exempt if it has at any time been held by the Academy 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.

B4.4 - 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, ascertaining a person's fitness or competence in relation to their profession, ascertaining the cause of an accident, etc.
- 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.

B4.5 - Prejudice to the conduct of public affairs* (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.

B4.6 - 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.

B4.7 - 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.

B4.8 - 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.

B4.9 - Personal information* (Section 40)

Where an individual seeks information about themselves Data Protection Act powers apply. Where the personal 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.

B4.10 - Legal professional privilege* (Section 42)

Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally such information will be privileged. This exemption covers all such information where a claim to legal professional privilege can be in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.

B4.11 - 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. 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.

B5 - Confidentiality & Applying Exemptions

When considering if an exemption to disclosure should apply, bear in mind that the presence of confidential markings such as Restricted, Confidential and Private 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.

B6 - Timing

Where information has previously been withheld, it must not be assumed that any subsequent requests for the same information will also be refused. Sensitivity of information decreases with age and the impact of any disclosure will be different depending on when the request is received. Therefore, for each request, it will be necessary to consider the harm that could result at the time of the request and, while taking into account any previous exemption applications, each case should be considered separately.

B7 – Next Steps

In all cases, before writing to the enquirer, the person responding to the FoI request 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 C – Applying the Public Interest Test

Having established that a qualified exemption(s) definitely applies to a particular case, a public interest test must be carried out 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.

C1 - Carrying out the test

It is worth noting that what is in the public interest is not necessarily the same as that which may be of interest to the public. It may be irrelevant that a matter may be the subject of public curiosity. In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one. Applying such a test

depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact on 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 show 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, such as the 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? |

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?

The answers to these questions and the reasons for those answers will be recorded. 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.

C2 - For Disclosure

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).

C3 - Against Disclosure

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, the enquirer will be contacted 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.