

Academies Trust

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# Freedom of Information Request Policy

Approved by the Trust Board on 22 October 2020  
Applicable from 23 October 2020

## 1. Purpose

The Co-operative Academies Trust (including its constituent Academies) [the Trust] is committed to transparency in its dealings with the public and fully embraces the aims of the Freedom of Information Act 2000 and the access provisions of the Data Protection Act 2018 (DPA). The Trust will make every effort to meet its obligations under the respective legislation and will regularly review procedures to ensure that it is doing so.

The underlying principle of this policy is that the public has a right to access to recorded information held by the Trust, and that the Trust should seek to promote an open regime regarding access to information, subject to the exemptions contained within the relevant legislation.

Annex 1 of this policy sets out how staff should deal with a Freedom of Information, or Environmental Information, request

This policy applies to:

- All employees of the Trust
- The Trust's Members and Trustees
- Members of all the Trust's local governing bodies or any body that replaces these

## 2. Introduction

The Freedom of Information Act 2000 (FOIA) applies to all public authorities and came fully into force on 1st January 2005. It provides the public with a statutory right of access to recorded information held by authorities, subject to certain exemptions, within twenty working days.

The FOIA is fully retrospective and applies to all information that falls within the scope of the FOIA, not just information created from 1st January 2005.

Section 19 of the FOIA also obliges the Trust to make information pro-actively available in the form of an approved "publication scheme". The details of the Trust's publication scheme can be found in Annex 2 of this policy

The FOIA does not operate in isolation. The Environmental Information Regulations 2004 support individuals seeking information about the environmental performance of public authorities.

The right of access to information under the FOIA is not absolute. There are exceptions built into the legislation. One major class of exceptions comes from the intersection of the information held by the Trust and its duties under the Data Protection Act (DPA).

In general, information that is classed as personal data under the DPA is exempt from release under the FOIA, although again this exemption is not absolute.

The Information Commissioner's Office regulates the operation of the Freedom of Information Act and can on behalf of an individual seeking information.

If the Trust decides to withhold information under the provisions of the legislation, this can be challenged by the requestor by raising a complaint with the Information Commissioner's Office.

This policy links to the Trust's Data Protection Policy.

### 3. Responsibilities

3.1 The Trust will:

3.1.1 Put in place a clear procedure for dealing with Freedom of Information requests. This procedure is attached as Annex 1.

3.1.2 Follow any additional guidance from the Information Commissioner's Office (ICO) produced subsequently to this policy.

3.1.3 Appoint and maintain a Freedom of Information Officer to provide guidance and support in meeting requests under such legislation. The Trust's Freedom of Information Officer is GDPR Sentry.

3.1.4 Ensure that the Freedom of Information Officer is aware of any requests received by the Trust.

3.1.5 Provide access to information to allow requests to be met, in line with legislation.

3.1.6 Take advice from the Freedom of Information Officer with regards to the management of requests.

3.1.7 Ensure that all requests are suitably documented including the rationale for any information that is withheld.

3.1.8 Ensure that the response to a request is made within 20 working days.

3.2 The Freedom of Information Officer will:

3.2.1 Provide guidance and support to the Trust in dealing with Freedom of Information request

3.2.2 Work with the Data Protection Officer to ensure that any responses to requests do not contravene the provisions of the DPA

3.2.3 Provide a route of communication to the Information Commissioner's Office in the event of a dispute about the response to a request.

3.2.4 The Data Protection Officer will provide support and guidance to separate personal data from responses to FOIA requests

### 4. Implementation of policy

This Policy shall be deemed effective on 23 October 2020. No part of this Policy shall have retroactive effect and shall thus apply only to matters occurring on or

after this date.

## 5. Review

This policy will be reviewed bi-annually, or when the Information Commissioner's Office (ICO) issues revised guidance on this topic.

## Annex 1: Procedure for Managing Freedom of Information Requests

### 1. Freedom of Information resources

Information accessible through a Freedom of Information request is by its nature related to the administration of the Trust and its academies. Requests to an academy will be dealt with by the academy unless they relate more generally to the Trust. The Trust will gather information from its academies where required to meet a request that it has received directly.

This means that both the Trust and the individual Academies will need to have a group of people to support the provision of information. The teams are likely to include

Other staff involved should include:

- A member of senior leadership to oversee the response
- A representative of Finance
- A representative of HR
- Any other staff required to extract relevant information

In the case that an academy appoints a Freedom of Information Lead, that individual should manage the request. Advice and support should be sought from the Freedom of Information Officer.

### 2. Procedure overview

The procedure for managing Freedom of Information Act (FOIA) requests needs to be implemented in detail by the management team across the Trust and its academies. These procedures need to take account of the following stages and requirements. The actions described in this section are by no mean exhaustive. The Trust may establish further detailed procedures and work instructions. Where this happens, they will be referred to in the main body of this policy.

- Receiving a request
- Clarifying a request
- Applying exemptions
- Assembling the response
- Communicating the response
- Complaints and dealing with the ICO

### 3. Receiving a request.

Requests under the FOIA are required to be in writing. This includes any social media channel made available by the Trust. To be accepted a an FOIA request must include

- The real name of the requestor
- A valid address for the requestor
- The details of the information sought

A request that does not meet these basic requirements cannot be ignored and must be handled on the basis of the requirements in Section 4 of this policy.

There is no intrinsic requirement to verify the name given by the person making the request, however, if the Trust or Academy believes that a false name is being used as part of a repeated or vexatious request, it may seek suitable evidence from the requestor to demonstrate that they have used their real name.

All requests must be logged at the point of receipt and the Freedom of Information Officer should be informed.

### 4. Clarifying a request

Although the FOIA has been in force since 2005 there is frequently a misunderstanding about its application. The Trust has a duty under Section 16 of the Freedom of Information Act to provide advice and assistance to an individual making a request.

This means that the Trust cannot ignore a request that does not fully meet the specifications listed in Part 3 above. Instead it has a responsibility to reach out to the requestor to clarify the request that is being made.

There are various reasons for a request to need clarification, the follow examples are common but not exhaustive:

- The request is for personal data, or a mixture of organisational and personal data
- The request is not specific enough to be actioned
- The request is for data covered by the Environmental Information Regulations

In the case that the request is not clear, the Freedom of Information Officer should be consulted. The Freedom of Information Officer may advise the Trust or Academy of the best action to take or may communicate directly with the requestor. Where necessary the Freedom of Information Officer will work with the Data Protection Officer to separate requests for personal data.

Where communication with the requestor is required, the time for delivering the response does not commence until the Trust has had answers to its questions of clarification. Any requests for clarification will be recorded in detail.

If the requestor does not provide the required clarification for the request to become valid the Trust can record the attempt to seek clarification and consider the request closed.

In some situations, a request may be considered vexatious and the Trust has the opportunity to refuse to meet the request. In the case that the Trust or an Academy feels that a request is vexatious, it must seek the advice of the Freedom of Information Officer who will make a final determination whether the request must be answered. This determination will be based on the history of the request and the specific guidance on vexatious requests published by the Information Commissioner's Office.

Any refusal of a request on the grounds of being vexatious will be recorded in detail.

## 5. Applying Exemptions

At this point there is a properly framed request for information. The Trust's publication scheme should be checked to see if the data is already made public. If it is public, the requestor can simply be referred to that data.

The majority of exemptions do not apply to the Trust, however, some notable examples are:

- Section 36: Prejudice the effective conduct of public affairs
- Section 38: Endangering Health and Safety
- Section 40: Personal Information
- Section 41: Confidentiality
- Section 43: Trade secrets and prejudice to commercial interests
- Section 44: Prohibitions on disclosure

Some of these exemptions are absolute while others are subject to both a prejudice test and a public interest test.

Particularly with the exemptions around personal information the result can be a request that can only be met in part.

The application of the exemption in Section 36 of the FOIA would require a decision at the highest level of management, the Trust Board. Where a Trust Board decision is required this will be dealt with by the Chairs' Committee.

Application of any exemptions other than those in Section 40 should not be undertaken without consulting the Freedom of Information Officer.

Any use of an exemption should be documented. Where the exemption is not absolute this documentation must include the evaluation of the prejudice and public interest tests.

The FOIA includes clauses on the amount of work it is reasonable to undertake to meet a request. For the Trust this limit is £450. The majority of this cost is likely to be based on staff cost. This must be accounted for at the rate of £25 per hour irrespective of who carries out the request. There may also be costs associated with retrieving and manipulating the information required.

In the case of a large request the Trust will undertake an exercise to estimate the likely cost of responding. If the cost is estimated at over £450 the Trust can take this forward as an exemption. Alternatively, the Trust can communicate with the requestor to determine if they are willing to accept the cost above £450 or whether they can reduce the scope of the request.

If the requestor agrees to pay the difference between the £450 limit and the estimated cost, the collection of the information should not commence until payment has been received from the requestor this initiates the 20 working day delivery period.

If the Trust is proposing to make a charge for providing information, then the rationale for the estimate must be documented as this may be required if the requestor complains about the scale of the charge.

## 6. Assembling the response

Once decisions have been made about whether a blanket exemption is going to be applied then any remaining information can be gathered.

In general, the deliverables from a request include a statement of whether the requested information exists and then the relevant information itself.

It is important to recognise that the FOIA can only provide access to information and documents that exist at the time of the request.

For example, if an individual asks for minutes of a meeting to discuss potential overspends at an academy, and no such meeting has taken place there is no data to provide.

Some requestors, understanding this stipulation will ask for notes and emails relating to a particular subject as well as specific items like minutes. If data has not been collected about a particular subject, even if it could be collected, there is no requirement to begin collection to meet the request.

It is during this phase of assembling the response that questions arise about whether the data would be classed as personal data relating to a third party (not the requestor). It is important to bear in mind that the definition of personal data under the terms of the data protection act is very broad and it is essential that the full range of data are considered. This is especially the case with the addition of the term 'identifiable' to the definition.



In general, personal data would be exempt from release although there are some circumstances where the legitimate interest of disclosure would outweigh the protection provided to the individual.

In any circumstances where there is a question over whether information represents personal data, the Freedom of Information Officer will consult with the Data Protection Officer. The Data Protection Officer will have final judgement on whether information is personal data and will advise the Trust about to potential application of Legitimate Interest disclosure.

There is a requirement for the response to a Freedom of Information request to be delivered within 20 working days. This period commences once a valid request has been received. Unlike subject access requests, school holidays are not included in the calculation.

## 7. Communicating the response

The response to a request should be in writing and delivered to the address provided by the requestor. If the volume of results is large and the requestor provided a postal address, the Trust may ask the requestor if they are willing to accept electronic delivery.

The response should clearly state the response to any and all points in the request and both confirm or deny the information is held (unless an exemption to confirmation has been used) and then state whatever information is available for that question.

In the case that information is withheld and the duty to confirm the existence of the information is in place, the Trust needs to provide an overview of the reasons for the data being withheld. This overview must be sufficient for the requestor to base a complaint upon.

Details of how a complaint may be made should be provided. This might first refer to the Freedom of Information Officer to point to the contact details for the ICO.

A copy of the information provided should be retained for six (6) years after the completion of the request.

## 8. Complaints and consulting the ICO

Where a requestor is unhappy with the way that a request has been dealt with, they have the right to raise a complaint with the ICO. This complaint must be founded on the process by which the response has been made, unless there is a question of the veracity of the information release.

Complaints are often based on issues such as:

- The time taken to fulfil a request

- Missing information expected by the requestor
- Whether applied exemptions are appropriate

If a complaint is received, the Freedom of Information Officer must be informed and consulted and notification should be made to Trust Board. The potential for a decision being made against the Trust by the ICO to produce negative publicity is high.