

# **Freedom of Information and Environmental Information Request Handling Policy**

**Version 01**

Policy Date: November 2019

**Learn to Live Federation**

**Reviewed by the**

**Learn to Live Federation Governing Body = Autumn Term 2019**

**To be reviewed = Autumn 2022**

If you require help in the interpretation of this policy,  
contact Dave O'Loughlin, Data Protection Officer, Learn to Live Federation

If this document has been printed please note that it may not be the most up-to-date version.  
For current guidance please refer to the:

Bidwell Brook website <https://bidwellbrook.devon.sch.uk/> and  
Ellen Tinkham website <http://ellentinkham.devon.sch.uk/>

This policy can be made available to the public, upon request, under the Freedom of  
Information Act 2000.

# **Contents**

## **Introduction**

Scope and purpose

1.0 Duties and codes of practice

2.0 Responding to general enquiries

3.0 Right of access

4.0 Clarifying requests

5.0 Handling formal requests

6.0 Obligation to provide information 'held'

7.0 Transferring requests

8.0 Communicating information to the applicant

9.0 Charging for requests

10.0 Exemptions, exceptions and the public interest

11.0 Requests exceeding the £450 limit

12.0 Manifestly unreasonable requests

13.0 Vexatious requests

14.0 Disclosure would prejudice the effective conduct of public affairs

15.0 Access to information about employees

16.0 Commercial interests and contractors

17.0 Publishing responses

18.0 Right to complain

Policy History

## Introduction

The [Freedom of Information Act 2000](#) (the FOI Act) and the [Environmental Information Regulations](#) 2005 (the EI Regulations) came into full effect in 2005. The FOI Act makes provision for the disclosure of information held by public authorities, or by persons providing services for them. The EI Regulations implement Council Directive [2003/4/EC](#) on public access to environmental information. The definition of 'environmental information' is described in [Article 2\(1\)](#) of the Directive.

The information requests described in this policy are handled by Dave O'Loughlin, Data Protection Officer, Learn to Live Federation, Hollow Lane, Exeter EX1 3RW. Requests received by the Federation should be forwarded quickly to Dave O'Loughlin, Data Protection Officer.

Our Federation has a duty to provide personal data to certain applicants under the provisions of [Article 15](#) of the General Data Protection Regulation. The handling of these requests are dealt with under the Federation's Data Protection Policy.

This policy has been approved by the Learn to Live Federation Governing Body.

## Scope and purpose

This policy sets out the Learn to Live Federation's duties and obligations in respect of the FOI Act and the EI Regulations and highlights the responsibilities of all staff (temporary or permanent), governors, contractors, agents and any other person working with the Federation, to assist us with complying with our duties under this legislation.

The purpose of this policy is to raise awareness of the FOI Act and the EI Regulations within the Federation and to set out how the Federation will meet its obligations and fulfil its duties.

## 1.0 Duties and Codes of Practice

1.1 The Federation has a legal duty under the FOI Act and the EI Regulations, to be open and transparent about the information it holds and must provide access to its information through FOI Act and EI Regulations requests (information requests).

1.2 The FOI Act places a legal duty on the Federation to have an approved Publication Scheme whereby it routinely publishes information on its website. The Federation has adopted the ICO Model Scheme in its entirety which can be found via <https://ico.org.uk/media/for-organisations/documents/1153/model-publication-scheme.pdf>

1.3 The EI Regulations require the Federation to progressively make environmental information available to the public by publishing this information on the internet (in most cases) and take reasonable steps to organise its environmental information to make it easier to access and publish. The Federation must also publish facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals.

1.4 The FOI Act and the EI Regulations place a legal duty on the Federation to provide advice and assistance to applicants who want to make or have made information requests to the Federation. The Federation endeavours to assist the public in making a request, where it is practical and reasonable to do so.

1.5 The FOI Act is supported by three Codes of Practice which the Federation endeavours to comply with. These are detailed below;

- [The Section 45 Code of Practice on Freedom of Information](#)
- [The Section 46 Code of Practice on Records Management](#)
- [Code of practice on datasets](#)

1.6 The Federation also complies with the EI Regulations [Code of Practice](#) which provides non-statutory guidance on the discharge of the obligations of public authorities under these regulations.

## **2.0 Responding to general enquiries**

2.1 The Federation receives a vast number of ‘enquiries’ from people every day. It is not always necessary or appropriate to treat every enquiry as a formal information request under the FOI Act and EI Regulations (the legislation). If a request can be answered quickly and the information being requested is not confidential or controversial, the request should be handled by the person or team receiving it as ‘business as usual’, unless the applicant has an expectation that the request will be handled formally under the legislation. Where there is doubt, seek advice from the Federation’s FOI lead.

### **3.0 Right of access**

3.1 The legislation provides that any person making an information request is entitled to be informed in writing by the public authority, whether it holds the information requested and if it does, to have that information communicated to them within 20 working days. There are some circumstances when the Federation is not obliged to confirm or deny whether it holds information, which are described in [section 2](#) of the FOI Act and [regulation 12\(6\)](#) of the EI Regulations.

3.2 The Federation is not obliged to comply with an information request under the FOI Act, unless it is in writing; it states the name of the applicant and an address in which the Federation can correspond with them, and describes the information being requested. The Federation is not obliged to accept requests where the applicant is clearly using a pseudonym, for example 'Mickey Mouse'. However, in such cases the Federation will take a pragmatic approach and may accept requests where the identity of the applicant is not relevant.

3.3 A request is considered 'in writing' if it is transmitted by electronic means; is received in legible form and is capable of being used for subsequent reference.

3.4 The Federation is not obliged to respond to 'verbal' information requests under the FOI Act. However, if an applicant is unable to make a written request, for example due to visual impairment, the Federation will assist the applicant by making the request in writing for them, where it is reasonable to do so.

3.5 Applicants are entitled under the EI Regulations to make *verbal* requests and are not required to put their request in writing. However, written requests are helpful for audit trail purposes and for ensuring that the original request has been recorded and understood correctly by the Federation. If an applicant is happy to put their request in writing, they should be encouraged to do so.

### **4.0 Clarifying requests**

4.1 A request for information must adequately specify and describe the information sought by the applicant. The Federation is entitled to ask for more detail, if needed, to enable it to identify and locate the information requested. The Federation will, as far as reasonably practicable, provide assistance to applicants to enable them to describe more clearly the information requested, where required.

## **5.0 Handling formal requests**

5.1 All disclosures are reviewed and any relevant [exemptions](#) or [exceptions](#) applied before the information is released (see section 10 of this policy). Information will only be withheld from disclosure where a valid exemption or exception applies.

5.2 The Federation recognises it is an offence under [section 77](#) of the FOI Act and [regulation 19](#) of the EI Regulations, for any person employed by, is an officer of, or is subject to the direction of the Federation, to deliberately alter, deface, block, erase, destroy or conceal any record held by the Federation, with the intention of preventing its disclosure to the applicant, of all or any part of the information which they are entitled to. Federation employees who are asked to assist with the processing of an information request will do so promptly and fully.

## **6.0 Obligation to provide information ‘held’**

6.1 The Federation is required to disclose information to applicants if it is ‘held’ by the Federation. The FOI Act states that information is considered ‘held’ if it is held by the authority (otherwise than on behalf of another person) or it is held by another person on behalf of the authority. The EI Regulations state that information is ‘held’ if it is in the possession of the authority and has been produced or received by the authority. In cases where it is unclear whether information is held by the Federation for the purposes of the legislation, advice will be obtained from Legal Services.

## **7.0 Transferring requests**

7.1 If the Federation does not hold the information requested, but has reason to believe that some or all of the information is held by another public authority, the Federation will inform the applicant of this. The Federation will suggest to the applicant that they re-apply to the authority which may hold the information, and will provide their contact details.

## **8.0 Communicating information to the applicant**

8.1 Applicants can request that the Federation communicates the information to them as a copy in permanent form (for example, an electronic or paper copy); available for them to inspect or provide them with a digest or summary of the information (if one already exists). The Federation will comply with any expressed preferences of communication, where it is reasonable to do so. In deciding whether it is reasonable, the Federation will take into account all the circumstances and the cost in doing so.

## 9.0 Charging for requests

9.1 There is no provision for charging applicants a fee for making requests under the FOI Act. However, the Federation is permitted to charge applicants for disbursements, such as postage or photocopying (at a rate of no more than 10p per sheet). As a general policy, the Federation will only charge applicants a disbursement fee, if they request a printed copy of the information which amounts to 500 sheets or more. The Federation will not charge applicants for disclosures made in electronic format. Where a fee is applied, the Federation is not obliged to disclose the information until it has received the necessary payment beforehand.

9.2 If an information request falls under the EI Regulations, the Federation may charge the applicant a reasonable fee for making the information available. Any charges made will be in accordance with regulation 8 of the EI Regulations (*charging*) and will be notified to the applicant prior to proceeding.

9.3 The Federation recognises that it cannot charge a fee for allowing an applicant to view public registers or lists of environmental information held by the Federation, or to examine the information requested at the place which the public authority makes available for that examination.

9.4 When making a charge, whether for information that is proactively disseminated or provided on request, the charge will not exceed the cost of producing the information unless the Federation is entitled to levy a market-based charge for the information.

9.5 Applicants will be notified via a 'fees notice', if their request will be subject to a fee. Applicants will have 3 months to make their payment from the date of the fees notice. If payment has not been received by the Federation within this time, the request will be closed and disclosure will not be made.

## 10.0 Exemptions, exceptions and the public interest

10.1 The legislation recognises that there may be circumstances when information should not be disclosed as part of an information request. Part II of the FOI Act provides a number of *exemptions* from the duty to disclose information and regulation 12 of the EI Regulations provides *exceptions* from the duty to disclose environmental information. The full list of exemptions and exceptions can be found on the Information Commissioner's website at [www.ico.gov.uk](http://www.ico.gov.uk).

10.2 The FOI Act exemptions are split into two types – ‘*absolute*’ and ‘*qualified*’. When the Federation relies on a *qualified* exemption, it must conduct a *public interest test*. *Absolute* exemptions do not require a public interest test to be conducted.

10.3 The term *public interest* is not defined in the legislation, but is generally considered as being something that serves the interests of the public. When applying the public interest test, the Federation will decide whether it serves the interests of the public better to withhold or disclose the information. The Federation will not take into account any potential embarrassment that might be caused by the disclosure. The public interest favours accountability and good administration and it is this interest that will be weighed against the public interest in not disclosing the information. There is an express presumption of disclosure under the EI Regulations and unlike the FOI Act exemptions, all of the EI Regulations exceptions are subject to a public interest test.

10.4 In cases where the Federation is considering using a *qualified* exemption or an exception, the 20 day deadline may be extended in complex cases, up to 40 working days. In such cases the applicant will be informed within 20 working days of the exemption or exception being considered and if not apparent, why. The applicant will also be told when a decision is likely to be made by.

## **11.0 Requests exceeding the £450 limit**

11.1 The Federation is not obliged to comply with an FOI Act request if the cost in supplying the information would exceed the limit set out in The [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#) (Appropriate Limit and Fees Regulations). The fees limit for the Federation is £450, which equates to 18 hours of staff time. It should be noted that the *Appropriate Limit and Fees Regulations* do not apply to EI Regulation requests. However, requests for environmental information which would be particularly voluminous to respond to, may fall under the *Manifestly Unreasonable* exception under the EI Regulations (see section 12 of this policy).

11.2 If the Federation receives multiple FOI Act requests for information on the same or similar subject (within 60 working days of each other) from one applicant or from other applicants who appear to be acting in collaboration, the Federation may aggregate the time it would take to answer all of the requests. If the requests exceed the £450 limit, the requests may be refused.



11.3 When deciding whether or not a request will exceed the £450 limit, the Federation recognises it can only take into account the time it would take to:

- determine whether it holds the information
- locate the information, or a document which may contain the information
- retrieve the information, or a document which may contain the information, and
- extract the information from a document containing it

11.4 The Federation is not permitted to take into account the time it would take to consider any exemptions that may apply and redact (black out or edit) any exempt material.

11.5 If the Federation wishes to refuse an FOI Act request on the grounds of cost, it will issue the applicant with a refusal notice in writing and give a breakdown of the estimated cost or hours that would be taken to carry out the work. The Federation will offer applicants advice and assistance to help them bring their request within the limit, where it is reasonable to do so.

## **12.0 Manifestly unreasonable requests**

12.1 As stated previously, there is no statutory equivalent to the *Appropriate Limits and Fees Regulations*, under the EI Regulations. If an EI Regulation request is received which is considered particularly voluminous, these requests may be refused under the *Manifestly Unreasonable* exception in regulation 12(4)(b) of the EI Regulations.

12.2 When considering whether an EI Regulation request is *Manifestly Unreasonable*, the Federation will follow the Information Commissioner's guidance and relevant case law.

12.3 The Information Commissioner's guidance suggests that regulation 12(4)(b) provides an exception to the duty to comply with an EI Regulation request in two circumstances: 1) where it is vexatious and 2) where it would incur unreasonable costs for the public authority or an unreasonable diversion of resources. These however, are only examples and each case will be decided on its own facts. Before refusing a request on the grounds of *Manifestly Unreasonable*, the Federation will firstly offer the applicant advice and assistance.

## **13.0 Vexatious requests**

13.1 On rare occasions, the Federation may receive a *vexatious request*. The Federation does not have to disclose information in response to a vexatious request and can refuse such requests under [section 14\(1\)](#) (*Vexatious Request*) of the FOI Act or regulation 12(4)(b) (*Manifestly Unreasonable*) of the EI Regulations. In such cases, the Federation will consider the Information Commissioner's guidance on [vexatious requests](#) and any appropriate case law.

13.2 If a request is deemed vexatious, the Federation will notify the applicant of this by issuing a refusal notice and provide a clear explanation as to how and why it meets one or more of the Information Commissioner's indicators of a vexatious request. A request does not need to meet all 5 tests for it to be considered vexatious.

13.3 The Federation is not obliged to provide applicants with a refusal notice under the FOI Act, when refusing on the grounds of vexatious, if the Federation has notified the applicant of this in relation to a previous request and if it would be unreasonable in all the circumstances to expect the Federation to serve a further notice in relation to the current request.

## **14.0 Disclosure would prejudice the effective conduct of public affairs**

14.1 Section 36 of the FOI Act provides an exemption from the right to know, if the disclosure of information would prejudice the effective conduct of public affairs, through the inhibition or likely inhibition of the free and frank provision of advice or exchange of views (guidance on this exemption can be found at [www.ico.gov.uk](http://www.ico.gov.uk)).

14.2 This exemption can only be applied to an FOI Act request with the express permission of the Federation's *qualified person*, who will consider the relevant facts of the case and make an objective and reasonable decision as to whether the information requested should be released. The Federation's *qualified person* for the purposes of this exemption is the Head Teacher.

## **15.0 Access to information about employees**

15.1 On occasion, the Federation receives requests for information about employees or other individuals, such as Members. These requests sometimes ask for information in relation to salaries, job descriptions, pensions, expenses and correspondence generated by them or contains reference to them.

15.2 Section 40(2) of the FOI Act and regulations 12(3) and 13 of the EI Regulations provide an exemption/exception from the duty to disclose '*personal data*' about identifiable individuals, where the disclosure would breach the Data Protection Act 2018 or the General Data Protection Regulation.

15.3 Generally, this means the Federation must balance the legitimate interests of the public in having access to the information, against the interests of the individual under the first data protection principle (*personal data shall be processed fairly and lawfully*) and in particular, considering whether it is unfair to release the information.

15.4 When considering whether the release of personal data will be *unfair*, in response to an information request, the Federation will consider the following:

- the possible consequences of disclosure on the individual;
- the reasonable expectations of the individual, taking into account expectations both at the time the information was collected and at the time of the request;
- the nature of the information itself;
- the circumstances in which the information was obtained;
- whether the information has been or remains in the public domain;
- the 'freedom of information principles' of transparency and accountability; and
- any legitimate interests in the public having access to the information relevant to the specific case.

15.5 When deciding whether or not to release information relating to an employee, the Federation will comply with the DPA 2018 and follow the Information Commissioner's Office (the ICO) guidance and relevant case law. The Federation will also take into account Local Government Guidance such as [Publishing Senior Salary Information](#), where relevant.

15.6 Employees may be informed if an information request has been received requesting access to personal data relating to them, where the Federation considers the information *should* be disclosed. Employees will not automatically be informed if the Federation refuses the request.

15.7 Individuals have a right under data protection laws to prevent the processing of their personal data, if it is likely to cause *unwarranted and substantial damage or distress*. If an employee has been informed that their personal data may be disclosed in response to an information request, and they object to the information being released, they should write to the Head Teacher outlining their objections. Objections made must include arguments as to why the publication of their information in the particular circumstances will cause them or another person *substantial, unwarranted damage or distress*.

15.8 The Federation will consider objections carefully on a case-by-case basis and will consult legal advisers, and other relevant persons as appropriate. Individuals will be told the outcome within 21 days, together with the Federation's reasons for its decision. If the Federation agrees not to publish the information, it will disclose that fact to the applicant, unless this in itself would breach the data protection principles.

## **16.0 Commercial interests and contractors**

16.1 The Federation has a duty to comply with the legislation and as such, information obtained from contractors and other third parties may be disclosed, unless an exemption or exception applies.

16.2 The Federation endeavours to make all third parties aware that their information may be disclosed in response to information requests, during the tendering stages and in their contract. There is an expectation that contractors who want to work with the Federation will familiarise themselves with the obligations imposed on the Federation, in relation to the FOI Act and EI Regulations.

16.3 The legislation recognises that there are valid reasons for withholding some information from disclosure, where it can be justified that disclosure would prejudice the *commercial interests* of the Federation or a third party or if the information is *confidential* and disclosure would amount to an *actionable breach of confidence*. The Federation will therefore take into account the exemptions provided under the FOI Act, namely section 41 (*information provided in confidence*) and section 43 (*commercial interests*) and regulation 12(5)(e) (*confidentiality of commercial or industrial information*) when considering an information request for this type of information.

16.4 If a request is received for information relating to a contractor or other third party, the Federation will notify the company or person of this and give them the opportunity to state whether they believe that some or all of the information requested is exempt under the legislation and the reasons why. The final decision on whether or not to disclose information rests with the Federation.

16.5 If Contractors or third parties hold information on behalf of the Federation, they must have systems in place to allow easy identification and retrieval of the information, in the event of an information request being received. In such cases the Federation expects its Contractors or third parties to supply Federation information to them upon request, within 10 working days.

## 17.0 Dealing with Disputes

17.1 The Federation has a procedure in place for dealing with disputes in relation to its handling of information requests and the Federation’s Publication Scheme. This procedure is in accordance with the FOI Act Code of Practice and the EI Regulations. Any dispute should be submitted in writing to the Learn to Live Federation Governing Body based at Ellen Tinkham School, Hollow Lane, Exeter EX1 3RW. Acknowledged receipt of the dispute will be made within 14 working days during term time only.

17.2 If applicants are not satisfied with the outcome of their complaint, they have the right to refer the matter to the Information Commissioner’s Office at [www.ico.gov.uk](http://www.ico.gov.uk).

## Policy History

| <b>Policy Date</b>               | <b>Summary of Change</b> | <b>Contact</b>   | <b>Implementation Date</b>   |
|----------------------------------|--------------------------|--|------------------------------|
| Model policy<br>Autumn Term 2019 | New policy               | Martin Lawrence<br><b>Strategic Information<br/>Governance Manager &amp;<br/>Data Protection Officer</b> | 2 <sup>nd</sup> October 2019 |