



## Freedom of Information Policy

### Introduction

The Freedom of Information (FOI) Act 2000 gives the public a general right to access recorded information held by public authorities including Further Education Colleges. The Act promotes greater openness and accountability across the public sector, therefore facilitating a better understanding of how public bodies carry out their business, why they make the decisions they do and how they spend public money. All institutions are required to issue a publication scheme. Also, the Environmental Information Regulations 2004 allow wider public access to environmental information held by the College.

### The Publication Scheme

Under the FOI it is the duty of every public body to adopt and maintain a publication scheme to facilitate the proactive release of information. In accordance with the legislation, Halesowen College shall adopt the publication scheme (see attached), which is a document describing the information that the College publishes or otherwise makes available as a matter of routine. This model scheme is in line with Section 20 of the Act and is the new scheme to be adopted by all public authorities from 1 January 2009. This scheme is that approved by the UK Information Commissioner and is accessible on the College website.

The publication scheme shall be reviewed annually in accordance with College policies to ensure that

- when new information is added by the College, details are added to the scheme.
- when information becomes obsolete or superseded then the information is removed.
- contact details of key staff or teams are accurate and data is accessible.

Any changes to the standard scheme must be approved by the UK Information Commissioner.

The College will be in breach of the FOI Act if it does not adopt an approved scheme and/or does not publish information in accordance with the scheme it has adopted. The College will compile and publicise a guide to the specific information made available under the scheme. Frontline staff shall be aware of the commitment the College has made to provide information and how it is obtained.

### Responsibilities for Freedom of Information

Under the FOI Act the governing body is responsible for compliance. However to manage this on a day to day basis the College shall establish a team responsible for Data Protection and FOI compliance comprising:

- Director of Finance and Administration
- CIS Manager
- Student Services Director
- Curriculum Team Manager
- Senior Personnel and Equality Officer

The CIS Manager is the named Data Co-ordinator.

All staff within the College must:

- identify what information they hold which comes under the Act
- manage that information so that it is easily accessible including forwarding updated information to the Web Developer to populate the website.

The Data Co-ordinator shall systematically perform data audits to collate this information. Guidance on records management is specified in Financial Regulations and the College Data Protection Policy. The College must organise records efficiently and destroy records that are no longer necessary.

## Handling Freedom of Information Requests

The FOI Act permits access to all types of information, for example organisational charts, policies and procedures, indeed all documents specified in the publication scheme. From 1 January 2005 members of the public have the right to request any information held by the College known as the 'right to know'.

In accordance with the publication scheme, where it is within the capability of the College, information will be provided on the website [www.halesowen.ac.uk/foi](http://www.halesowen.ac.uk/foi)<sup>1</sup>. However, where this is not available and/or an individual does not wish to access the information by the website this may be obtained in hard copy format.

Any requests for information under the FOI Act, Data Protection Act and Environmental Information Regulations received by a member of staff via email or as a paper copy must firstly be forwarded to the Data Co-ordinator who will liaise with colleagues to provide the information. Requests which are potentially vexatious shall be forwarded directly to the Director of Finance and Administration (see below).

The FOI Act does not specify a formal request procedure. An application for information simply has to be in written form which includes a fax, letter and email. Staff should advise people making verbal requests to contact the College in written form (except for Environmental Information Regulation requests; see below).

Under the Freedom of Information Act, any individual, anywhere in the world, is able to make a request to the College for information. They do not have to indicate why they want the information. An applicant is entitled to be informed in writing as to whether the information is held and to have the information communicated to them or provided with an explanation why this is not being done.

Any request made to the College stating the name of the applicant, including an address for correspondence and describing the information required, qualifies as a request for information.

## Timescale for Compliance

On receipt of a request the College is obliged to inform the applicant in writing whether the information requested is held and if so, communicate that information to the applicant, **promptly, but not later than 20 working days after receipt** of the request.

The 20 working day clock starts:

- the day **after** the College receives the request. The time limit for compliance is the twentieth working day **following** the date of receipt.

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<sup>1</sup> Note there is a separate email address for FOI requests [FOI@halesowen.ac.uk](mailto:FOI@halesowen.ac.uk)

or

- the day the College receives further information it reasonably requires in order to identify and locate the information requested.

A request is received when it is delivered to the College, or when it is delivered to the inbox of a member of staff. The date of receipt is **not** the date the request is passed to the appropriate person for processing.

In respect of emails, however, where an automated 'out of office' message provides instructions on how to re-direct a message, the request would not be 'received' until it was re-sent to the alternative contact.

The correspondence to the applicant must state:

- whether the College holds the information of the type requested;
- whether it cannot be supplied due to the constraints of the Data Protection Act which takes precedence over any FOI rights;
- whether the information is exempt from disclosure (see Exemptions below).

If the information is held and able to be provided ie with terms and conditions of the Data Protection Act and is not subject to an exemption, it must be given to the individual in so far as possible in the format requested ie hard copy or electronic.

Information will be collated and prepared by the FOI team in conjunction with other appropriate College staff. For each request a FOI log must be completed stating:

- Date of request (as College date stamp)
- Nature of request
- Name and address of individual
- Person within College responsible for information
- Length of time taken to locate information
- Any exemptions applied
- Costs incurred/charged
- Whether applicant was satisfied

The completion of such a log is necessary to ensure that if referred to the Information Commissioner the College could demonstrate that the process was completed fairly and within the legislation.

## **Exemptions**

Some information is exempt from disclosure and so does not have to be provided.

In certain circumstances the College may refuse a FOI request:

- when the request is vexatious or repeated;
- when the cost of compliance exceeds the appropriate limit;
- when the information falls under one of the exemption.

The Freedom of Information Act provides two distinct but related rights of access to information which impose corresponding duties on the College. These are:

- the duty to inform the applicant whether or not information is held by the authority, and, if so,

- the duty to communicate that information to the applicant.

The Act refers to the first duty as ‘the duty to confirm or deny’.

If information has been requested but is not held, it will normally be reasonable to inform the applicant of this fact. However, there may be some exceptional cases where it would not even be right to confirm or deny that information requested was held.

There are two broad categories of exemptions:

- Absolute exemptions. These are cases where the right to know is wholly disapplied. In some cases there is no legal right of access at all, for instance information supplied by or relating to bodies dealing with security matters or information covered by parliamentary privilege. In other cases, for instance information available to the applicant by other means or personal information relating to the applicant, it may be possible to obtain the information by alternative means although not under FOI.
- Qualified exemptions. These are cases where the College, having identified a possible exemption, must consider whether the public interest in maintaining the exemption is greater than that in confirming or denying the existence of the information requested and providing the information to the applicant.

The full list of exemptions can be found in Appendix A.

Exemptions are subject to the public interest test unless FOI states that they are absolute exemptions.

When applying the test, the College is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.

The main factors counting against the disclosure of information are those which are set out in the exemptions themselves. For instance, there is an obvious public interest in national defence, maintaining good international relations and law enforcement. If disclosure of information would adversely affect these matters, then it is relevant to consider the exemptions to weigh the possible adverse effect of disclosure against the positive benefit of openness.

There may, however, be other, additional factors to take into account once it has been established that at least one of the exemptions has been engaged. Consideration of the European Convention on Human Rights, for instance may lead to the conclusion that information should not be disclosed because it might prejudice the right to a fair trial.

Should the College receive a request for information which is covered by an exemption, the applicant will be informed wherever possible within 20 days of receipt of the request that the information cannot be provided together with an explanation. However, when considering a qualified exemption it is reasonable for the twenty-day period to be extended provided an interim response is issued within the timescale together with an estimate of when the final response is expected. In addition the College must inform the applicant that they have the right to appeal to the Information Commissioner about the information being withheld. Where the College does not hold the requested information then again this must be communicated within 20 days giving a brief explanation of why this is not held if appropriate and similarly where the applicant may find the information.

## **Vexatious and Repeat Requests**

A request can be treated as vexatious where it would impose a significant burden on the College in terms of expense or distraction and meets at least one of the following criteria:

- It clearly does not have any serious purpose or value;
- It is designed to cause disruption or annoyance;
- It has the effect of harassing the College;
- It can otherwise fairly be characterised as obsessive or manifestly unreasonable.

Each specific request should be looked at and assessed individually.

The College will not refuse a request for information which should be available through the publication scheme on the grounds that it is vexatious.

Issues of vexatiousness may arise where the College receives requests from individuals who have previously registered a grievance, pursued a complaint or otherwise been involved in a dispute. It is not unusual for those who believe they have been unfairly treated by the College to pursue or attempt to re-open their grievance by using the FOI.

In circumstances where requests are used solely for the purpose of going over the same ground raised in a previously closed complaint which has exhausted available procedures, the College will view the request as vexatious.

Any request considered to be vexatious will be passed to the Director of Finance and Administration and the advice of the Data Commissioner sought as required. Should this be linked to a complaint/dispute this will then be referred to the Principal.

Where the College has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

All refusals for information will be communicated to the applicant in accordance with the paragraph above on exemption.

## **Fees**

Requests for information may be chargeable although the College will aim to publish most information in the guide on the website which can be accessed free of charge. The charging regime shall be straightforward, transparent and fair. Information contained in the publication scheme guide but not available on the internet or where the applicant requires a hard copy is subject to a **minimum** £10 fee. Any disbursement costs of providing other information will also be chargeable. Staff time to locate and retrieve the documents will be charged at £25 per hour.

The Government has published the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. In accordance with this legislation fees are capped at £450. As a result, the College may refuse to accede to a request for information if the cost of doing so is likely to exceed this amount. In estimating this cost the College shall only account for costs that may reasonably be incurred in determining whether the information is held. Where costs are estimated to exceed the £450 threshold the College will ask the applicant to modify their request. If this is not possible the College may refuse the request.

The College acknowledges its responsibilities regarding FOI within its terms and conditions of contract. In addition this matter is included in all tender documentation. Information which may be deemed commercially sensitive will remain confidential subject to the public interest test.

All charges shall be made on an official College invoice.

### **Environmental Information Regulations**

Environmental Information Regulations includes data on air quality, water, waste management, noise and sustainability. Requests may be verbal and the College has to respond within twenty working days except when a request is complex or voluminous. Reasonable fees can be charged as above except when the information is examined on College premises. Exemptions from disclosure are available only if the public interest in with adding the information outweighs the public interest in disclosure.

Requests under the Environmental Information Regulations will be handled as requests under FOI. The Data Co-ordinator will liaise with Estates Director.

### The Exemptions

#### Qualified

- Information intended for future publication (s.22)
- National security (s.24) (This exemption should be read in conjunction with s.23 – “information supplied by, or relating to, bodies dealing with security matters”)
- Defence (s.26)
- International relations (s.27)
- Relations within the UK (s.28)
- The economy (s.29)
- Investigations and proceedings (s.30)
- Law enforcement (s.31)
- Audit functions (s.33)
- Formulation of government policy (s.35)
- Prejudice to effective conduct of public affairs (s.36)
- Communications with her Majesty (s.37)
- Health and safety (s.38)
- Some personal information (s.40).
- Legal professional privilege (s.42)
- Commercial interests (s.43)

#### Absolute

- Information accessible by other means (s.21)
- Information supplied by or relating to, bodies dealing with security matters (s.23)
- Court records (s.32)
- Parliamentary privilege (s.34)
- Personal information (s.40)
- Information provided in confidence (s.41)
- Information whose disclosure is prohibited by law (s.44)