

OUR LADY UMBRELLA TRUST
(St Ann's, St Catherine's, St Mary's, Sacred Heart, St Thomas More & Notre Dame)

FREEDOM OF INFORMATION POLICY

1. Introduction

- 1.1 The schools are 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.
- 1.2 This policy applies to everyone who is authorised by the school to process any paper based or electronic system containing information provided for, owned, controlled or administered by the schools.
- 1.3 This policy applies to all information processed by, and on behalf of, the schools regardless of form. Requests under FOI can be addressed to anyone in the schools so all staff need to be aware of the correct process for dealing with requests. This process is outlined below.

Please note that for schools, the timescales for responding to a valid request is 20 school days, or 60 working days if this is shorter.

2. Background

- 2.1 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.
- 2.2 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.
- 2.3 Requests under FOI 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 fax, email, Facebook, Twitter or other social media used by the schools), 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 FOI enquiry. There is a time limit of 20 school days excluding school holidays, or 60 working days if this is shorter, for responding to the request.

3. Scope

- 3.1 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.
- 3.2 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.
- 3.3 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.

- 3.4 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

- 4.1 The schools acknowledge that as well as responding to requests for information, it is good practise to publish information proactively. This will be achieved through the schools' adoption of the Model Publication Scheme for schools which has been approved by the Information Commissioners Office. A guide to the information available from each school under the Model Publication Scheme can be found in Appendix 1 below.
- 4.2 The schools recognise their duty to provide advice and assistance to anyone requesting information. They 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.
- 4.3 The schools will tell enquirers whether or not they hold the information being requested (the duty to confirm or deny), and provide access to the information they hold in accordance with the procedures laid down in Appendix 2.

5. Publication Scheme

- 5.1 The Publication Scheme and the materials it covers will be available both in hard copy and on the school website.

6. Dealing with Requests

- 6.1 We will respond to all requests in accordance with the procedures laid down in Appendix 2.
- 6.2 We will ensure that all staff are aware of the procedures.

7. Exemptions

- 7.1 Certain information is subject to either absolute or qualified exemptions. The exemptions are listed in Appendix 3.
- 7.2 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.
- 7.3 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

- 8.1 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.
- 8.2 For information on applying the Public Interest Test see 'The Public Interest Test – Freedom of information act' guidance document created by the Information Commissionaires office. This and further information can be found at: www.ico.org.uk

9. Charging

- 9.1 We reserve the right to refuse to supply information where the cost of doing so exceeds the statutory maximum, currently £450
- 9.2 In some cases we may need to pass on the direct cost of providing the information as a fee. In this case the fees will be calculated according to FoI regulations, and the person notified of the charge before information is supplied.

10. Responsibilities

- 10.1 The Assistant Headteacher (school organisation) is the nominated member of staff to coordinate enquiries and be a point of reference for advice and training.

11. Complaints

- 11.1 Any written (including email) expression of dissatisfaction about how the school has responded to a FoI request will be handled through the school's existing complaints procedure which is available upon request.
- 11.1.1 The review will be handled by someone not involved in the original decision if possible.
- 11.1.2 The Information Commissioner's Office recommends that public authorities carry out internal reviews within 20 working days. Under Environmental Regulations Information there is a legal requirement that internal reviews must be carried out as soon as possible and within 40 working days. The school cannot charge for carrying out an internal review.

If the complaint requires that the original request and response be reviewed, based on the outcome the school will:

- 11.1.3 If the outcome is that the information should be disclosed the school will do this as soon as practicable.
- 11.1.4 If the outcome is that procedures within the school have not been properly followed, the school will ensure that it reviews its procedures to prevent any recurrence.
- 11.1.5 If the outcome upholds the school's original decision or action, the applicant should be informed of their right to appeal to the Information Commissioner. More details of this can be found at www.ico.org.uk and complainants will be informed of this.
- 11.1.6 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

Review Date: **March 2015** Next review: **March 2018**

Appendix 1 – Model Publication Scheme.

Information to be published	How the information can be obtained	Cost
<p>Class 1 - Who we are and what we do (Organisational information, structures, locations and contacts)</p> <p>This will be current information only</p>		
Who's who in the school	Website or School Office	
Who's who on the governing body and the basis of their appointment	Website or School Office	
Instrument of Government	School Office	
Contact details for the Head teacher and for the governing body (named contacts where possible with telephone number and email address (if used))	Website or School Office	
School prospectus	Website	
Annual Report	Website	
Staffing structure	School Office	
School session times and term dates	Website	

Information to be published	How the information can be obtained	Cost
<p>Class 2 – What we spend and how we spend it (Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit)</p> <p>Current and previous financial year as a minimum</p>		
Annual budget plan and financial statements	School Office	
Capitalised funding	School Office	
Additional funding	School Office	
Procurement and projects	School Office	
Pay policy	School Office	
Staffing and grading structure	School Office	
Governors' allowances	School Office	

Information to be published	How the information can be obtained	Cost
<p>Class 3 – What our priorities are and how we are doing (Strategies and plans, performance indicators, audits, inspections and reviews)</p> <p>Current information as a minimum</p>		
<p>School profile</p> <ul style="list-style-type: none"> • Government supplied performance data • The latest Ofsted report <ul style="list-style-type: none"> - Summary - Full report 	<p>Website</p>	
<p>Performance management policy and procedures adopted by the governing body.</p>	<p>School Office</p>	
<p>Schools future plans</p>	<p>School Office</p>	
<p>Every Child Matters – policies and procedures</p>	<p>School Office</p>	

Information to be published	How the information can be obtained	Cost
<p>Class 4 – How we make decisions (Decision making processes and records of decisions)</p> <p>Current and previous three years as a minimum</p>		
Admissions policy/decisions (not individual admission decisions)	Website	
Agendas of meetings of the governing body and (if held) its sub-committees	School Office	
Minutes of meetings (as above) – nb this will exclude information that is properly regarded as private to the meetings.	School Office	

Information to be published	How the information can be obtained	Cost
<p>Class 5 – Our policies and procedures (Current written protocols, policies and procedures for delivering our services and responsibilities)</p> <p>Current information only</p>		
<p>School policies including:</p> <ul style="list-style-type: none"> • Charging and remissions policy • Health and Safety • Complaints procedure • Staff conduct policy • Discipline and grievance policies • Staffing structure implementation plan • Information request handling policy • Equality and diversity (including equal opportunities) policies • Staff recruitment policies 	<p>Website Website Website School Office School Office School Office School Office Website School Office</p>	
<p>Pupil and curriculum policies, including:</p> <ul style="list-style-type: none"> • Home-school agreement • Curriculum • Sex education • Special educational needs • Accessibility • Race equality • Collective worship • Careers education • Pupil discipline 	<p>Website Website Website Website Website Website Website Website Website</p>	

Information to be published	How the information can be obtained	Cost
<p>Records management and personal data policies, including:</p> <ul style="list-style-type: none"> • Information security policies • Records retention destruction and archive policies • Data protection (including information sharing policies) 	<p>School Office School Office Website</p>	
<p>Charging regimes and policies.</p> <p>This should include details of any statutory charging regimes. Charging policies should include charges made for information routinely published. They should clearly state what costs are to be recovered, the basis on which they are made and how they are calculated.</p>	<p>School Office</p>	

Information to be published	How the information can be obtained	Cost
<p>Class 6 – Lists and Registers</p> <p>Currently maintained lists and registers only</p>		
Curriculum circulars and statutory instruments	Available for inspection at the School Office	
Disclosure logs	Available for inspection at the School Office	
Asset register	Available for inspection at the School Office	
Any information the school is currently legally required to hold in publicly available registers (THIS DOES NOT INCLUDE THE ATTENDANCE REGISTER)	Available for inspection at the School Office	

Information to be published	How the information can be obtained	Cost
<p>Class 7 – The services we offer (Information about the services we offer, including leaflets, guidance and newsletters produced for the public and businesses)</p> <p>Current information only</p>		
Extra-curricular activities	Website	
Out of school clubs	Website	
School publications	Website	
Services for which the school is entitled to recover a fee, together with those fees	Website	
Leaflets books and newsletters	Website	

Contact details:

SCHEDULE OF CHARGES

This describes how the charges have been arrived at and should be published as part of the guide.

TYPE OF CHARGE	DESCRIPTION	BASIS OF CHARGE
Disbursement cost	Photocopying/printing @ 5p per sheet (black & white)	Actual cost *
	Photocopying/printing @ 10p per sheet (colour)	Actual cost
	Postage	Actual cost of Royal Mail standard 2 nd class
Statutory Fee		In accordance with the relevant legislation (quote the actual statute)
Other		

* the actual cost incurred by the school

Appendix 2 Procedure for Dealing with Requests

To handle a request for information the governing body or delegated person will ask themselves a series of questions. These are set out below and shown later as process maps.

1. Is it a FOI request for information?

Not all requests are classified as requests under the FoIA and as such requests must first be categorised to ensure that, if they are valid, they are responded to in accordance to the correct legislative guidance.

The law has set a very low threshold for classifying Freedom of Information requests. In order to be a valid request under the Act, an enquiry must:

- be in writing. This could be a letter or email. Requests can also be made via the web, or even on social networking sites such as Facebook or Twitter if your school uses these;
- include the requester's real name. The Act treats all requesters alike, so you should not normally seek to verify the requester's identity. However, you may decide to check their identity if it is clear they are using a pseudonym or if there are legitimate grounds for refusing their request and you suspect they are trying to avoid this happening, for example because their request is vexatious or repeated. Remember that a request can be made in the name of an organisation, or by one person on behalf of another, such as a solicitor on behalf of a client;
- include an address for correspondence. This need not be the person's residential or work address – it can be any address at which you can write to them, including a postal address or email address;
- describe the information requested. Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way. The Act covers information not documents, so a requester does not have to ask for a specific document (although they may do so). They can, for example, ask about a specific topic and expect you to gather the relevant information to answer their enquiry. Or they might describe other features of the information (eg author, date or type of document).

Enquiries do not have to mention the Freedom of Information Act, or explain why the information is required. We can ask for further information to clarify the request or locate what has been requested but we must not give applicants the impression that they have to justify or explain the reason for their request. No account can be taken of the motivation behind a request.

Any written request for information, received by the School by whatever means (post, fax, email etc), will therefore fall under the Freedom of Information Act.

However, the following types of communication are not Freedom of Information requests:

- Requests for information about the person making the request. These come under the Data Protection Act rather than the Freedom of Information Act – please refer to the schools Data Protection Act policy for further details.
- Requests for information relating to the environment. These have to be dealt with according to the Environmental Information Regulations, a separate piece of legislation which has created rights similar to Freedom of Information.
- Communications which are not requests for information: e.g. complaints (unless the complainant requests information) or expressions of opinion.
- Requests for the views or opinions of members of school. The right of access created by the Freedom of Information Act only applies to recorded information, so staff are under no obligation to divulge their unrecorded thoughts or opinions (e.g. to the press).

Although requests should normally be in writing, in exceptional circumstances, where it appears that an enquirer is unable to submit a written request, it is acceptable to send a written confirmation of a telephone request to the enquirer's address, asking them to verify and return it. The enquiry will be treated as received once the verified request arrives.

2. Is this a valid FOI request for information?

An FOI request should:

- be **in writing**, including email, FAX, Facebook, Twitter or other social media;
- **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; and
- not be covered by one of the other pieces of legislation.

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.

Verbal enquiries are not covered by the FOI Act. 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.

If you receive a request for basic information, such as opening times, or whether your school has a space for their child, It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry (rather than a formal request) under your usual customer service procedures. The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away; or
- the request is too complex to provide an accurate response immediately; or
- the requester makes it clear they expect a response under the Act.

3. Does the school hold the information?

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

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

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

If the school does not hold the information, we will not 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.

4. Has the information requested already been made public?

Sometimes you may get requests for information that is already available in the public realm, such as school policies, school newsletters etc. If this information has been released by the school and is available via another means i.e. on the school website then release the information or direct the requestor to where the information can be found.

5. Is the request vexatious or manifestly unreasonable or repeated?

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.

If you have a genuine concern about releasing the information then the next stage is to see if any of the exemptions (Appendix 3) apply to the information requested. If the schools considers there to be a potential qualified exemption on the release of the information, a public interest test will be run to weigh up if the release of the information is in the public interest. If after the public interest test shows that it is in the public's best interest then the school will release the information.

As a general rule, you should not take into account the identity or intentions of a requester when considering whether to comply with a request for information. You cannot refuse a request simply because it does not seem to be of much value. However, a minority of requesters may sometimes abuse their rights under the Freedom of Information Act, which can threaten to undermine the credibility of the freedom of information system and divert resources away from more deserving requests and other public business.

You can refuse to comply with a request that is vexatious. If so, you do not have to comply with any part of it, or even confirm or deny whether you hold information. When assessing whether a request is vexatious, the Act permits you to take into account the context and history of a request, including the identity of the requester and your previous contact with them. The decision to refuse a request often follows a long series of requests and correspondence.

The key question to ask yourself is whether the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.

Bear in mind that it is the request that is considered vexatious, not the requester. If after refusing a request as vexatious you receive a subsequent request from the same person, you can refuse it only if it also meets the criteria for being vexatious.

You should be prepared to find a request vexatious in legitimate circumstances, but you should exercise care when refusing someone's rights in this way.

If we refuse a request as vexatious the school will send the requester a written refusal notice. The school will state what the decision is but in accordance with the act we are not required to explain the decision further.

The school will have a log of the reasons for your decision to enable justification to the Information Commissionaires Office if a complaint is made. **This will be retained for the current financial year + 2 years.**

You can refuse requests if they are repeated, whether or not they are also vexatious. You can normally refuse to comply with a request if it is identical or substantially similar to one you previously complied with from the same requester. You cannot refuse a request from the same requester just because it is for information on a related topic. You can do so only when there is a complete or substantial overlap between the two sets of information.

You cannot refuse a request as repeated once a reasonable period has passed. The reasonable period is not set down in law but depends on the circumstances, including, for example, how often the information you hold changes.

If we refuse a request as a repeated request the school will send the requester a written refusal notice. The school will state what the decision is but in accordance with the act we are not required to explain the decision further.

The school will have a log of the reasons for your decision to enable justification to the Information Commissionaires Office if a complaint is made. **This will be retained for the current financial year + 2 years.**

6. Can the school transfer a request to another body?

If the information is held by another public authority, such as your local authority, first check with them they hold it, and 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.

7. Could a third party's interests be affected by disclosure?

Consultation of third parties may be required if their interests could be affected by release of the information requested, and any such consultation may influence the decision.

Consultation will be necessary where:

- disclosure of information may affect the legal rights of a third party, such as the right to have certain information treated in confidence or rights under Article 8 of the European Convention on Human Rights;
- the views of the third party may assist us to determine if information is exempt from disclosure, or
- the views of the third party may assist us to determine the public interest.

8. Does an exemption apply?

The presumption of the legislation is that we will disclose information unless the Act provides a specific reason to withhold it. There are more than 20 exemptions. They are set out in Appendix 3 and are mainly intended to protect sensitive or confidential information.

When we have real concerns about disclosing the information we will look to see whether an exemption might apply.

Even then, where the potential exemption is a qualified exemption, we will consider the 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. Appendix 4 contains information on conducting a public interest test.

9. What if the request is for personal information?

15. Personal information requested by the subject of that information is exempt under the FOI Act as such information is covered by the Data Protection Act. Individuals must, therefore, continue to make a 'subject access request' under the Data Protection Act if they wish to access such information.

10. What if the details contain personal information?

Personal information requested by third parties is also exempt under the FOI Act where release of that information would breach the Data Protection Act. If a request is made for a document (e.g. Governing Body minutes) which contains personal information whose release to a third party would breach the Data Protection Act, the document may be issued by blanking out the relevant personal information as set out in the redaction procedure.

The procedure for redaction is:

- i) mask the passages which are not to be disclosed and photocopy;
- ii) annotate in the margin against each blank passage, the exemption and section of the Act under which this passage is exempt;
- iii) explain in the covering letter that the relevant exemptions are marked in the attachments and in the case of nonabsolute exemptions, how the public interest test has been considered.
- iv) On no account will we use the computer to rewrite the document or email and simply delete the exempted passages so that the resulting document appears as though they did not exist.
- v) The one circumstance where this would be permissible would be where the only redacted parts are personal information such as people's names and the covering letter explains this.

11. How much can we charge?

The Act allows governing bodies to charge for providing information.

The FOI Act recognises that freedom of information requests are not the only demand on the resources of a school. They should not be allowed to cause a drain on your time, energy and finances to the extent that they negatively affect your normal public functions.

Currently, the cost limit for complying with a request or a linked series of requests from the same person or group is set at **£450** for schools and we reserve the right to refuse to supply information where the cost of doing so exceeds the statutory maximum (£450).

When estimating the cost of compliance, you can only take into account the cost of the following activities:

- determining whether you hold the information;
- finding the requested information, or records containing the information;
- retrieving the information or records; and
- extracting the requested information from records.

The biggest cost is likely to be staff time. You should rate staff time at £25 per person per hour, regardless of who does the work, including external contractors. This means a limit of 18 staff hours applies to this school.

If you wish to use section 12 (cost limit) of the Act as grounds for refusing the request, you should send the requester a written refusal notice. This should state that complying with their request would exceed the appropriate cost limit. However, you should still say whether you hold the information, unless finding this out would in itself incur costs over the limit.

You can refuse a request if deciding whether you hold the information would mean you exceed the cost limit (£450), for example, because it would require an extensive search in a number of locations. Otherwise, you should say whether you hold the information, even if you cannot provide the information itself under the cost ceiling.

To calculate the cost you should estimate how many hours it would take staff to comply with the request and then multiply this by the rate of £25 per hour/per member of staff. E.G if finding and collating all the requested information would take 2 members of staff a full day (7.5 Hours) the school would need to work out $2 \times (7.5 \times 25) = £375$. In this example, finding and collating the required information does not exceed the ceiling limit and the estimated cost should be sent to the requestor. If the requestor pays the charge then the work should be carried out once the payment has cleared and the information provided as requested.

12. Is there a time limit for replying to the enquirer?

Compliance with a request must be prompt and certainly within the legally prescribed limit of 20 working days, excluding school holidays. The response time starts from the time the request is received. Where we have asked the enquirer for more information to enable you to answer, the 20 days start time begins when this further information has been received.

If a qualified exemption applies and you need more time to consider the public interest test, we will reply within the 20 days stating that an exemption applies but include 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 by the Department that normally this should be within 10 working days.

Where we have notified the enquirer that a charge is to be made, the time period stops until payment is received and then continues again once payment has been received.

13. What action is required to refuse a request?

If the information is not to be provided, the person dealing with the request will immediately contact the person in the school with delegated responsibility for FOI to ensure that the case has been properly considered and the reasons for refusal are sound. If it is decided to refuse a request, you need to send a refusals notice, which must contain:

- i) the fact that the responsible person cannot provide the information asked for;
- ii) which exemption(s) we are claiming apply;
- iii) why the exemption(s) apply to this enquiry (if it is not self-evident);
- iv) reasons for refusal if based on cost of compliance (see Appendix 4)
- v) in the case of non-absolute exemptions, how we have applied the public interest test, specifying the public interest factors taken into account before reaching the decision (see Appendix 3)
- vi) reasons for refusal on vexatious or repeated grounds
- vii) the internal complaints procedure.

For monitoring purposes and in case of an appeal against a decision not to release the information or an investigation by the Information Commissioner, the responsible person will keep a record of all enquiries where all or part of the requested information is withheld and exemptions are claimed. The record must include the reasons for the decision to withhold the information. Records will be retained for 5 years. There are no requirements to keep records where you have supplied the information requested.

14. What do I do if someone complains?

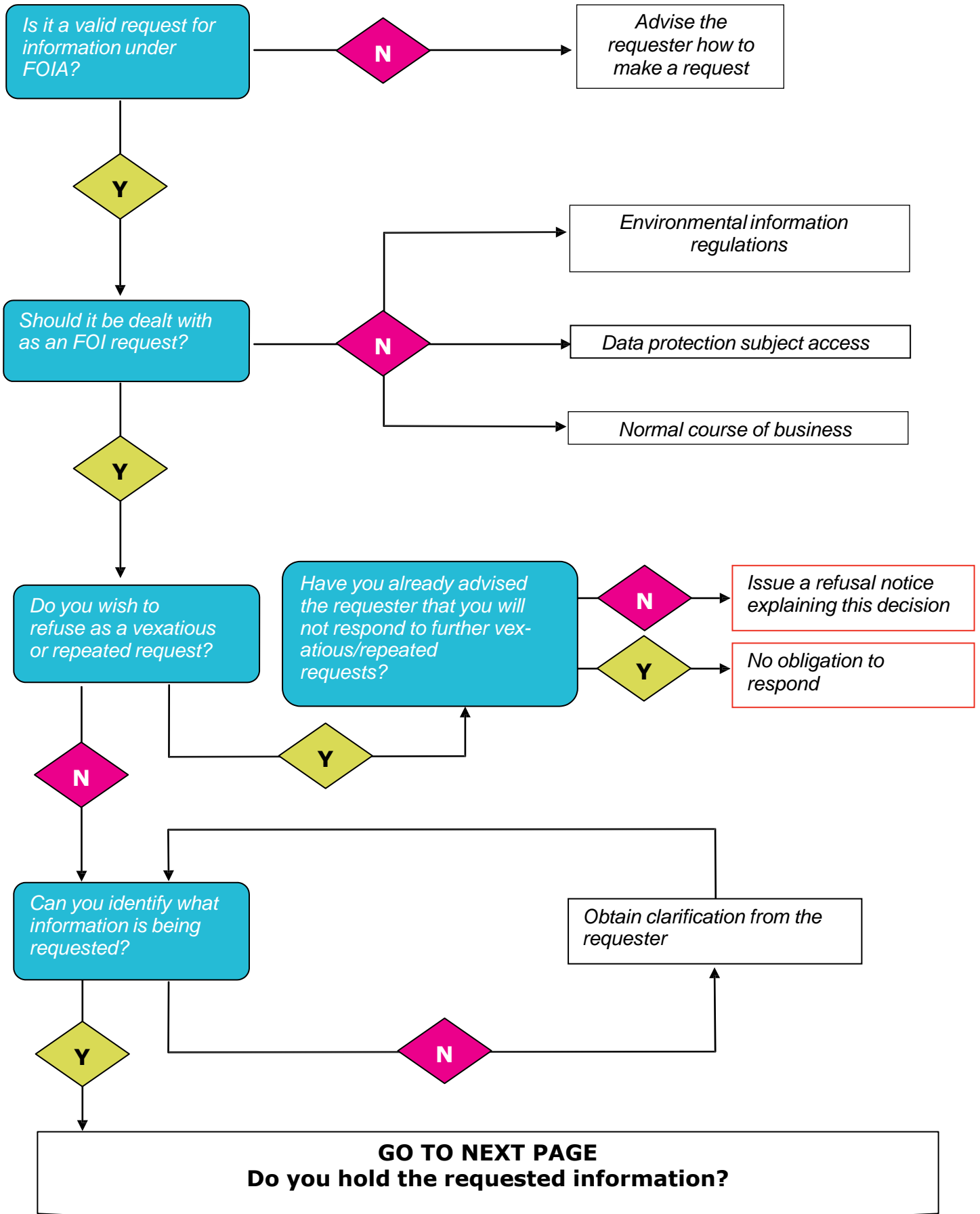
Any written (including email) expression of dissatisfaction - even if it does not specifically seek a review – will be handled through the school's existing complaints procedure. Wherever practicable the review should be handled by someone not involved in the original decision.

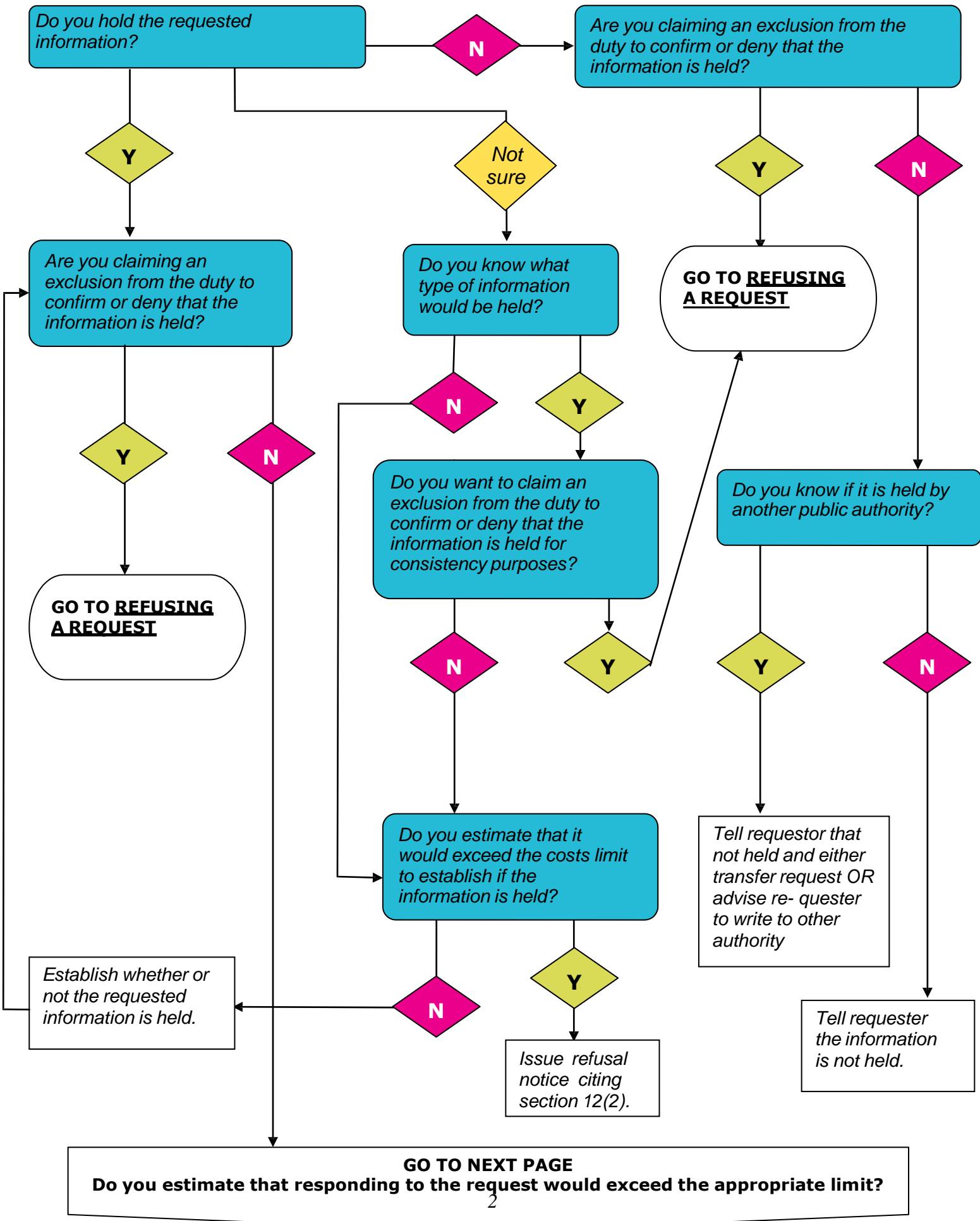
The Governing Body will set and publish a target time for determining complaints and information on the success rate in meeting the target. The school should maintain records of all complaints and their outcome.

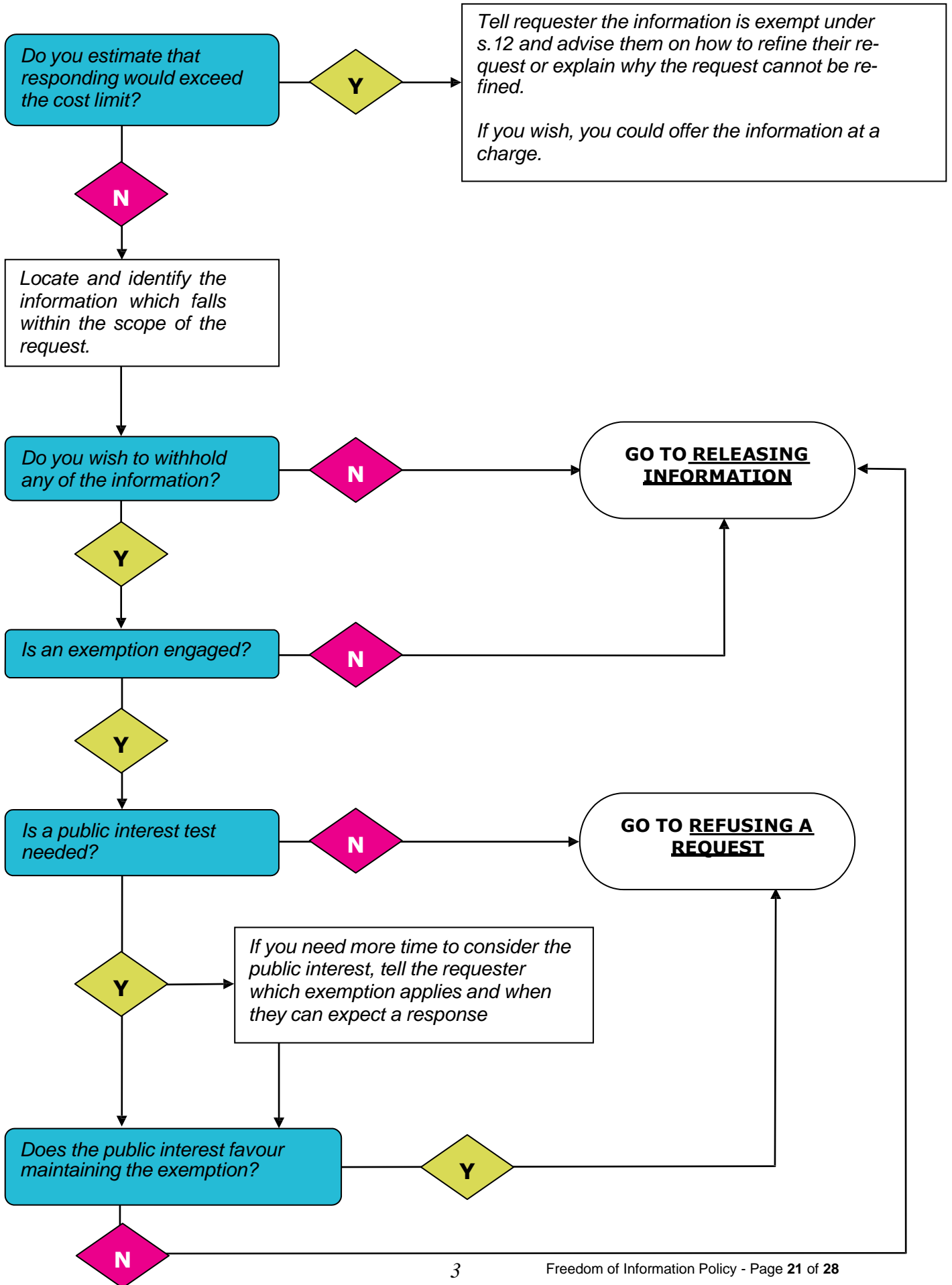
When the original request has been reviewed and the outcome is that the information should be disclosed this will be done as soon as practicable. When the outcome is that procedures within the school have not been properly followed, the school will review procedures to prevent any recurrence. When the outcome upholds the school's original decision or action, the applicant should be informed of their right to appeal to the Information Commissioner. The appeal should be made in writing to:

FOI Compliance Team (complaints), Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF

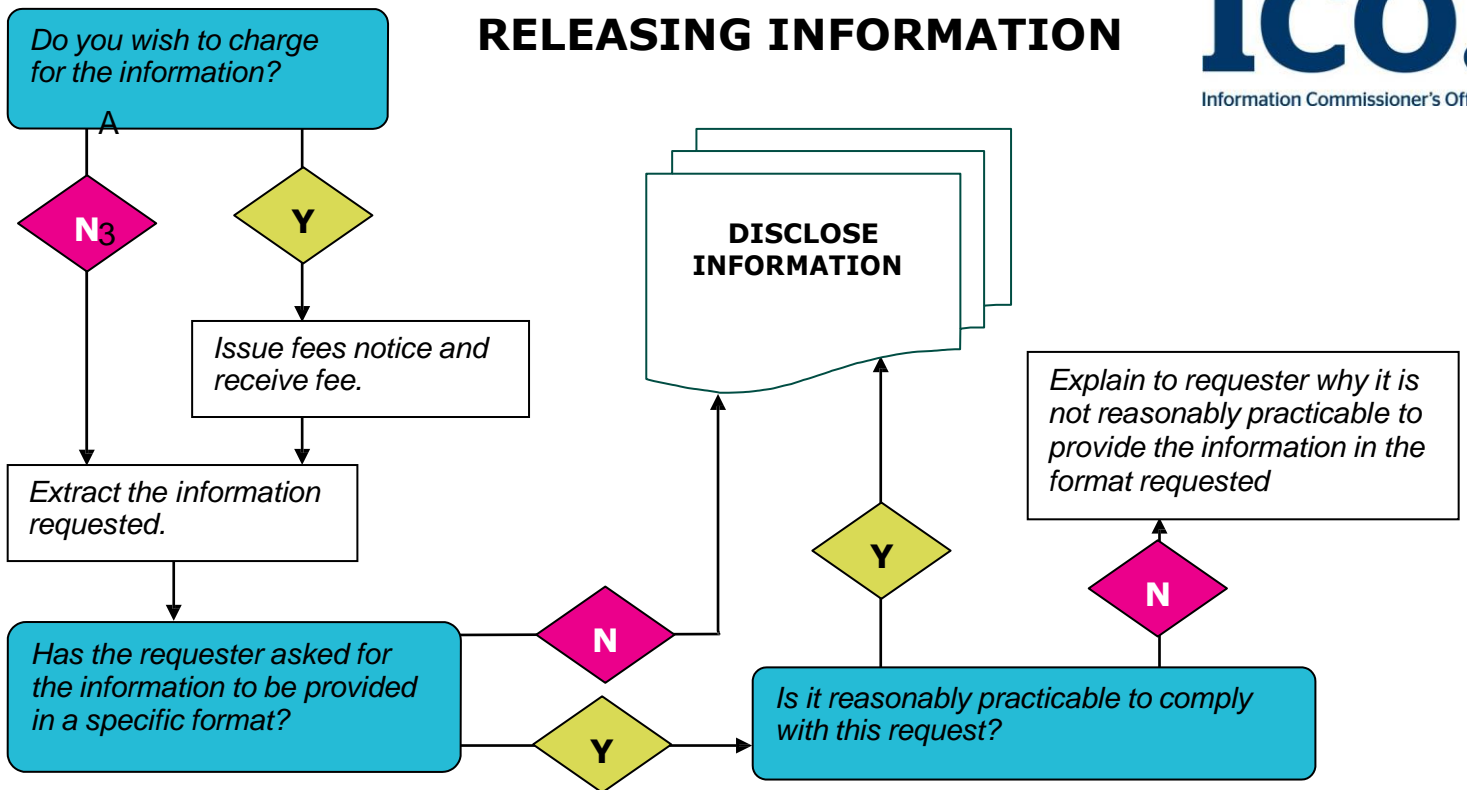
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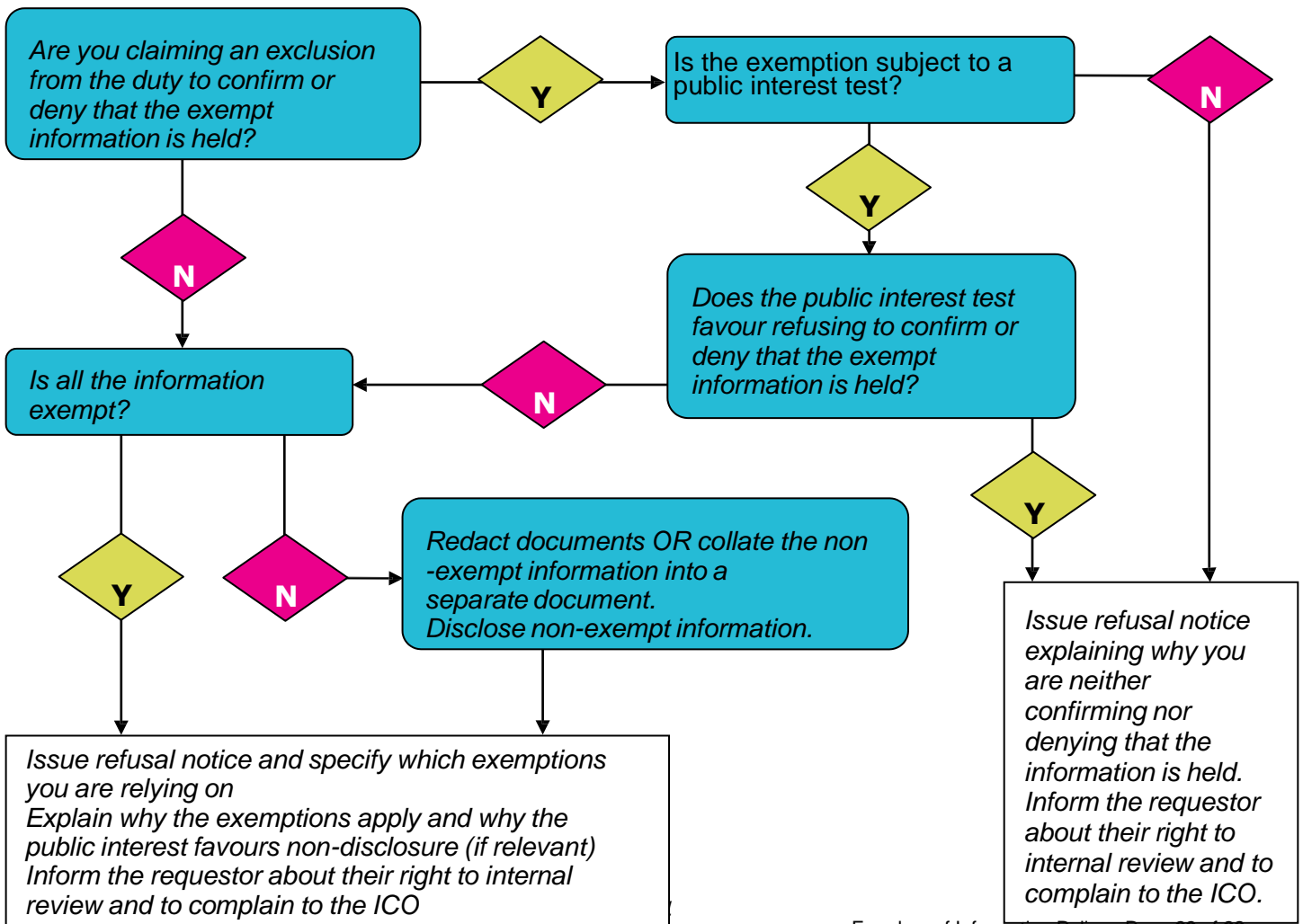




RELEASING INFORMATION



REFUSING A REQUEST



Appendix 3 - 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 FOI Act 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

In addition, the Freedom of Information Act contains a number of exemptions that allow the school to withhold information from a requester. In some cases it will allow the school to refuse to confirm or deny whether the school holds information.

If you are refusing all or any part of a request, you must send the requester a written refusal notice. You will need to issue a refusal notice if you are either refusing to say whether you hold information at all, or confirming that information is held but refusing to release it.

The school will review each request on an individual basis

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.

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.

What are the Qualified Exemptions?

8. 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 at Appendix 4. 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 prematurely¹. Remember, you still have a legal duty to provide reasonable advice and assistance.

¹ 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

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 administration in the UK ie 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, 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 4

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.