Cannon Lane Primary School

Freedom of Information Policy

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1 Legal framework

1.1. This policy has due regard to the following legislation:

- The General Data Protection Regulation
- The Freedom of Information Act 2000
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

1.2. This policy also has due regard to guidance, including, but not limited to, the following:

- ICO 'Model publication scheme' 2016
- ICO 'Duty to provide advice and assistance (section 16)' 2016

1.3. This policy will be viewed in conjunction with the following other school policies:

- GDPR Data Protection Policy

Scope

The Freedom of Information Act 2000 (FOI) joins the General Data Protection Regulation (GDPR) 2018 and the Environmental Information Regulations as legislation under which anyone is entitled to request information. Requests for personal data are still covered by the GDPR. Individuals can request to see what information the School holds about them. This is known as a Subject Access Request and must be dealt with accordingly.

Requests for information about anything relating to the environment – such as air, water, land, the natural world or the built environment and any factor or measure affecting these – are covered by the Environmental Information Regulations (EIR). They also cover issues relating to Health and Safety. For example, queries about chemicals used in the School, Trust, its Academies, or on Academy 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 FOI, but unlike FOI requests, they do not need to be written and can be verbal.

2 Accepting requests for information

Requests must be made in writing, (including email), and should include the enquirer's name and correspondence address and state what information they require. (See Appendix 1 for Process.) 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. (See Appendix 2 for Exemptions.)

There is no need to collect data in specific response to an FOI enquiry. There is a time limit of twenty (20) days, excluding school holidays, for responding to the request.

Obligations and Duties

The School recognises its duty to:

• provide advice and assistance to anyone requesting information. We will respond to straightforward verbal requests for information and will help enquirers to put more complex verbal requests into writing so that they can be handled under the Act.

• tell enquirers whether or not we hold the information they are requesting (the duty to confirm or deny) and provide access to the information we hold in accordance with the procedures laid down in Appendix 1.

The school has adopted the Model Publication Scheme for Schools approved by the Information Commissioner. The Publication Scheme and the materials it covers are readily available on our website. (See Appendix 3 for Publication Scheme.)

2.1. The school will only accept a request for information which meets all of the

following criteria:

- It is in writing
- It states the name of the applicant and an address for correspondence
- It describes the information requested

2.2. A request will be treated as made in writing if it meets all of the following requirements:

- It is transmitted by electronic means
- It is received in legible form
- It is capable of being used for subsequent reference

3 General right of access to information held by the school

3.1. Provided that the request complies with section 2 of this policy, the school

will, no later than 20 working days from receipt of the request, comply with its

duty to:

- Confirm or deny to any person making a request for information to the school, whether it holds information of the description specified in the request.
- Provide the documentation, if the school confirms that it holds the requested information.

3.2. The school will not comply with section 3.1 of this policy where:

- The school reasonably requires further information to meet a freedom of information request, has informed the applicant of this requirement, but was not subsequently supplied with that further information.
- The information is no longer readily available as it is contained in files that have been placed in archive storage or is difficult to access for similar reasons.
- A request for information is exempt under section 2 of the Freedom of Information Act 2000.
- The cost of providing the information exceeds the appropriate limit.
- The request is vexatious.
- The request is a repeated request from the same person made within 60 consecutive working days of the initial one.
- fee notice was not honoured.

3.3. Where information is, or is thought to be, exempt, the school will, within 20 working days, give notice to the applicant which:

- States the fact.
- Specifies the exemption in question.

3.4. The information provided to the applicant will be in the format that they have requested, where possible.

3.5. Where it is not possible to provide the information in the requested format, the school will assist the applicant by discussing alternative formats in which it can be provided.

3.6. The information provided will also be in the language in which it is held, or another language that is legally required. If the school is required to translate any information, it will do so.

3.7. If, under relevant disability and discrimination regulations, the school is legally obliged to provide the information in other forms and formats, it will do so.

4 The appropriate limit

4.1. The school will not comply with any freedom of information request that exceeds the statutorily imposed appropriate limit of £450.

4.2. When determining whether the cost of complying with a freedom of information request is within the appropriate limit, the school will take account only of the costs we reasonably expect to incur in relation to:

- Determining whether it holds the information.
- Locating the information, or a document which may contain the information.
- Retrieving the information, or a document which may contain the information.
- Extracting the information from a document containing it.
- Costs related to the time spent by any person undertaking any of the activities outlined in section 4.2 of this policy on behalf of the school, are to be estimated at a rate of £25 per person per hour.

4.3. Where multiple requests for information are made to the school within 60 consecutive working days of each other, either by a single person or by different persons who appear to be acting in concert, the estimated cost of complying with any of the requests is to be taken to be the total costs to the school of complying with all of them.

5 Charging fees

5.1. The school may, within 20 working days, give an applicant who has requested information from the school, a written notice stating that a fee is to be charged for the school's compliance. (See Appendix 3 for Fees)

5.2. Charges may be made for disbursements, such as the following:

- Photocopying

- Postage and packaging
- Costs directly incurred as a result of viewing information

5.3. Fees charged will not exceed the total cost to the school of:

- Informing the person making the request whether we hold the information.
- Communicating the information to the person making the request.

5.4. Where a fee is to be charged, the school will not comply with section 3 of this policy unless the requested fee is paid within a period of three months, beginning with the day on which the fees notice is given to the applicant.

5.5. The school will not take into account any costs which are attributable to the time spent by persons undertaking any of the activities mentioned in section 5.3 above.

5.6. When calculating the 20th working day in which to respond to a freedom of information request, the period beginning the day on which the fee notice is given to the applicant and ending with the day on which the fee is received, will be disregarded.

6 Means by which communication is to be made

6.1. Where, on making a request for information, the applicant expresses a preference for communication by any one of the following means, the school will, as far as is practicable, give effect to that preference:

- The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant.
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information.
- The provision to the applicant of a digest, or summary of the information, in permanent form or in another form acceptable to the applicant.

7 Providing advice and assistance

7.1. The school will meet its duty to provide advice and assistance, as far as is reasonable, to any person who proposes to make, or has made, requests for information to the school.

7.2. The school may offer advice and assistance in the following circumstances:

- If an individual request to know what types of information the school holds and the format in which it is available, as well as information on the fee's regulations and charging procedures.
- If a request has been made, but the school is unable to regard it as a valid request due to insufficient information, leading to an inability to identify and locate the information.
- If a request has been refused, e.g. due to an excessive cost, and it is necessary for the school to assist the individual who has submitted the request.

7.3. The school will provide assistance for each individual on a case-by-case basis; examples of how the school will provide assistance include the following:

- Informing an applicant of their rights under the Freedom of Information Act 2000
- Assisting an individual in the focus of their request, e.g. by advising of the types of information available within the requested category
- Advising an applicant if information is available elsewhere and how to access this information
- Keeping an applicant informed on the progress of their request

7.4. In order to provide assistance as outlined above, the school will engage in the following good practice procedures:

- Make early contact with an individual and keep them informed of the process of their request.
- Accurately record and document all correspondence concerning the clarification and handling of any request.
- Give consideration to the most appropriate means of contacting the applicant, taking into account their individual circumstances.
- Discuss with the applicant whether they would prefer to receive the information in an alternative format, in cases where it is not possible to provide the information requested in the manner originally specified.
- Remain prepared to assist an applicant who has had their request denied due to an exemption.

7.5. The school will give particular consideration to what level of assistance is required for an applicant who has difficulty submitting a written request.

7.6. In circumstances where an applicant has difficulty submitting a written request, the school will:

- Make a note of the application over the telephone and then send the note to the applicant to confirm and return – the statutory time limit for a reply would begin here.
- Direct the individual to a different agency that may be able to assist with framing their request.

NB. This list is not exhaustive, and the school may decide to take additional assistance measures that are appropriate to the case.

7.7. Where an applicant's request has been refused either because the information is accessible by other means, or the information is intended for future publication or research, the school, as a matter of good practice, will provide advice and assistance.

7.8. The school will advise the applicant how and where information can be obtained, if it is accessible by other means.

7.9. Where there is an intention to publish the information in the future, the school will advise the applicant of when this publication is expected.

7.10. If the request is not clear, the school will ask for more detail from the applicant in order to identify and locate the relevant information, before providing further advice and assistance.

7.11. If the school is able to clearly identify the elements of a request, it will respond following usual procedures and will provide advice and assistance for the remainder of the request.

7.12. If any additional clarification is needed for the remainder of a request, the school will ensure there is no delay in asking for further information.

7.13. If an applicant decides not to follow the school's advice and assistance and fails to provide clarification, the school is under no obligation to contact the applicant again.

7.14. If the school is under any doubt that the applicant did not receive the advice and assistance, the school will re-issue it.

7.15. The school is not required to provide assistance where an applicant's request is vexatious or repeated, as defined under section 14 of the Freedom of Information Act 2000.

7.16. The school is also not required to provide information where the cost of complying with a request exceeds the limit outlined in the Freedom of Information Act 2000. In such cases, the school will consider whether any information can be provided free of charge if the applicant refuses to pay the fee.

7.17. A record will be kept by the Headteacher in the school office of all the advice and assistance provided.

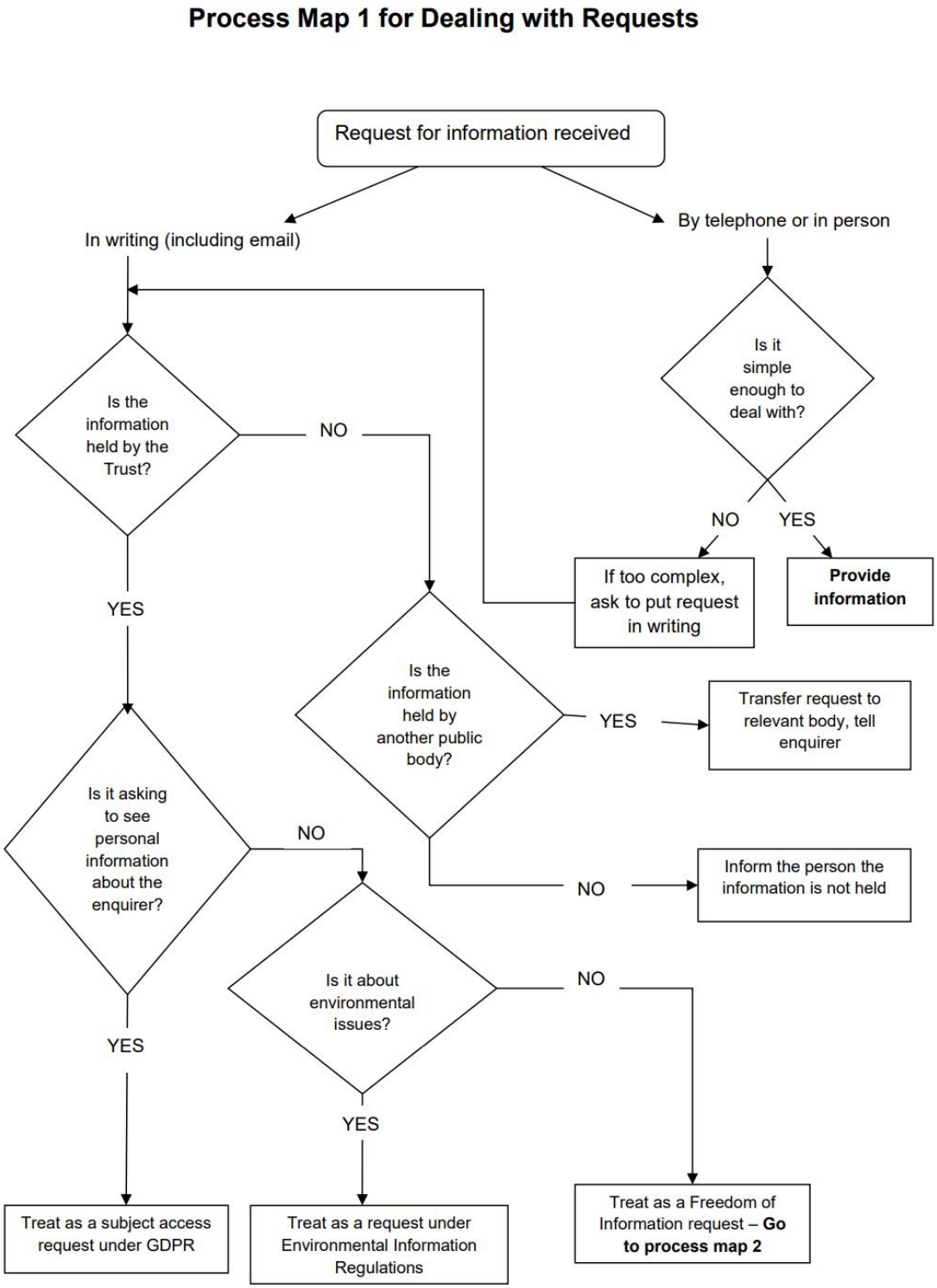
8 Publication scheme

8.1. The school will meet its duty to adopt and maintain a publication scheme which specifies the information which it will publish on the school website, and whether the information will be available free of charge or on payment.

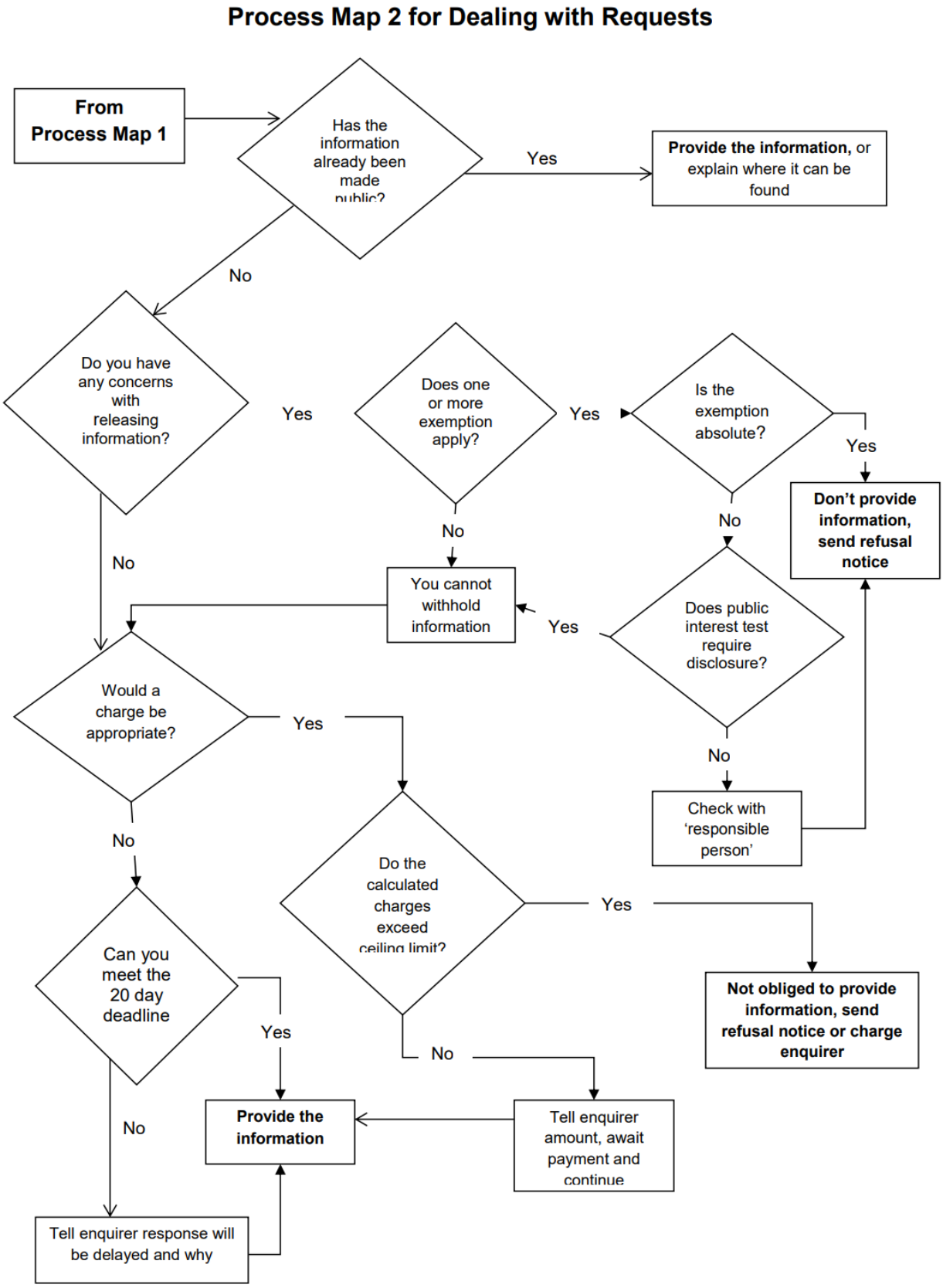
8.2. The publication scheme will be reviewed and, where necessary, updated on an annual basis.

9 APPENDIX 1 – Dealing with request

Process 1



Process 2


Process Map 2 for Dealing with Requests
From Process Map 1
Has the information already been made public?
Yes
Provide the information, or explain where it can be found
No
Do you have any concerns with releasing information?
Yes
Does one or more exemption apply?
Yes
Is the exemption absolute?
Yes
Don't provide information, send refusal notice
No
Does public interest test require disclosure?
Yes
No
You cannot withhold information
No
Would a charge be appropriate?
Yes
No
Check with 'responsible person'
Do the calculated charges exceed ceiling limit?
Yes
Not obliged to provide information, send refusal notice or charge enquirer
No
Can you meet the 20 day deadline
Yes
No
Provide the information
Tell enquirer amount, await payment and continue
Tell enquirer response will be delayed and why

10 APPENDIX 2 - Exemptions

Absolute Exemptions -There are eight 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.

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.

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.

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.

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.

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.

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 GDPR. Consult your existing Trust/Academy Data Protection Policy.

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.

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.

Qualified Exemptions

With qualified exemptions, even if it is decided that an exemption applies, there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing information. Guidance on carrying out the public interest test is at Appendix 4 The qualified exemptions in the Act are set out below:

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 prematurely. Remember, you still have a legal duty to provide reasonable advice and assistance.

2. National security (Section 24) (see also absolute exemption 23) Information is exempt for the purposes of safeguarding national security.

3. Defence (Section 26) Information is exempt if its disclosure would prejudice the defence of the UK.

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 or international organisation.

5. Relations within UK (Section 28) Information is exempt if its disclosure would, or would be likely to, prejudice relations between any administrations in the UK, ie the Government, Scottish Administration, Northern Ireland Assembly or the National Assembly of Wales.

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.

7. Investigations and proceedings conducted by public authorities (Section 30) Information is exempt if it has at any time been held by the School/Trust/Academy for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.

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/Trust/Academy which arise out of an investigation carried out for any of the purposes mentioned above

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.

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 the Attorney General) and the operation of any Ministerial private office.

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.

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.

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.

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.

15. Personal information (Section 40) – see also the absolute exemption part of Section 40 Where an individual seeks information about themselves, GDPR powers apply. Where the information concerns a third party, it is exempt if its disclosure would contravene the GDPR, or its 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 GDPR. 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.

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 [Academy] 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.

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 Academy). 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.

11 APPENDIX 3 – Publication Scheme

Publication Scheme

11.1 WHAT IS A PUBLICATION SCHEME?

The Freedom of Information Act (2000) (FOI) requires all Public Authorities (including schools) to produce a register of the types of information it will routinely make available to the public. This publication scheme follows a template approved by the Information Commissioner.

The scheme commits our school to:

- Proactively/ routinely publish information which is held by us falling within the "Classes" below (see section 2) in line with this scheme.
- Specify the information
- Explain how it will be made available
- Review and update information on a regular basis
- Explain any fees to be charged for the information
- Make this scheme publicly available
- Publish information held by the school that has been requested (unless not appropriate to do so)
- Publish information in a digital form that is capable of being re-used (under FOI Section 19 and the Re-use of Public Sector Information Regulations (2015))
- Make clear if any information is a relevant copyright work (under FOI Section 19(8)) and the school is the only owner

11.2 CLASSES OF INFORMATION

There are 7 classes of information we hold (see section 6 for details):

1. Who we are and what we do.
2. What we spend and how we spend it.
3. What our priorities are and how we are doing.
4. How we make decisions.
5. Our policies and procedures.
6. Lists and registers.
7. The services we offer.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage or is difficult to access for similar reasons.

11.3 MAKING INFORMATION AVAILABLE

Information will be provided on a website. Where it is impracticable to make information available on a website or when an individual does not wish to access the information by the website, the school will indicate how information can be obtained by other means and provide it by those means (see Section 6).

In exceptional circumstances some information may be available only by viewing in person. Where this manner is specified, contact details will be provided. An appointment to view the information will be arranged within a reasonable timescale.

Information will be provided in the language in which it is held or in such other language that is legally required. Where an authority is legally required to translate any information, it will do so.

Obligations under disability and discrimination legislation and any other legislation to provide information in other forms and formats will be adhered to when providing information in accordance with this scheme.

11.4 **CHARGING**

Charges which may be made for information published under this scheme

The purpose of this scheme is to make the greatest amount of information readily available at minimum inconvenience and cost to the public. Charges made by the school for routinely published material will be justified and transparent and kept to a minimum.

Material which is published and accessed on a website will be provided free of charge.

Charges may be made for information subject to a charging regime specified by law.

Charges may be made to cover our costs such as:

- photocopying
- postage and packaging
- the costs directly incurred as a result of viewing information

Charges may also be made for information provided under this scheme where they are legally authorised, they are in all circumstances (including the general principles of the right of access to information held) justified and are in accordance with a published schedule or schedules of fees which is readily available to you.

Charges may also be made for making datasets (or parts of datasets) that are relevant copyright works available for re-use. These charges will be in accordance with the terms of the **Re-use of Public Sector Information Regulations** (2015), where they apply, or with regulations made under FOI Section 11B, or with other statutory powers of the school.
If a charge is to be made, confirmation of the payment due will be given before the information is provided. Payment may be requested prior to provision of the information.

11.5 **WRITTEN REQUESTS**

Information held by the school that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act.

11.6 **PUBLICATION SCHEME – SCHEDULE**

Class 1 – Who we are and what we do **For example: Organisational information, staffing structures, locations and contacts. This will be current information only.**	· **Hard Copy** · **Website** · **Both**	
Information to be published	**How to get a copy**	**Cost**
Who's who in the school	Website	Free
Who's who on the governing body and the basis of their appointment	Website	Free
Instrument of Government	Website	Free
Contact details for the Head teacher and for the governing body (named contacts where possible with telephone number and email address (if used))	Website	Free
School prospectus	Website	Free
Staffing structure	Website	Free
School session times and term dates	Website	Free

Class 2 – What our priorities are and how we are doing **For example: Strategies and plans, performance indicators, audits, inspections and reviews). Current information as a minimum**	· **Hard Copy** · **Website** · **Both**	
Information to be published	**How to get a copy**	**Cost**
School profile:	Website	Free
Government supplied performance data		
The latest Ofsted report:		
– Summary		
– Full report		

Class 3 – How we make decisions **For example: Decision making processes and records of decisions. Current and previous three years as a minimum**	**Hard Copy** **Website** **Both**	
Information to be published	**How to get a copy**	**Cost**
Admissions policy/decisions (not individual admission decisions)	Website	Free
Agendas of meetings of the governing body and (if held) its sub-committees	Hard copy	10p per page
Minutes of meetings (as above) – this will exclude information that is properly regarded as private to the meetings.	Hard copy	10p per page

Class 4 – Our policies and procedures **For example: Current written protocols, policies and procedures for delivering our services and responsibilities. Current information only**	· **Hard Copy** · **Website** · **Both**	
Information to be published	**How to get a copy**	**Cost**
School policies including:	Website	Free

Charging and remissions policy	Website	
Health and Safety	Website	
Complaints procedure	Website	
Staff conduct policy	Hard copy	
Discipline and grievance policies	Hard copy	
Information request handling policy	Hard copy	
Equality and diversity (including equal opportunities) policies	Website	

Class 5 – The services we offer **For example: Information about the services we offer, including leaflets, guidance and newsletters produced for the public and businesses. Current information only**	· **Hard Copy** · **Website** · **Both** · **Some information may only be available by inspection**	
Information to be published	**How to get a copy**	**Cost**
Extra-curricular activities	Website	Free
Leaflets books and newsletters	Website	Free

12 Appendix 4 - Public Interest Test

You can withhold information only if it is covered by one of the exemptions and, for qualified exemptions, the public interest in maintaining the exemption outweighs the public interest in disclosure. You must follow the steps in this order, so you cannot withhold information because you think it would be against the public interest without first identifying a specific exemption.

Similarly, when considering whether you should disclose information, you will need to weigh the public interest in disclosure against the public interest in maintaining the exemption. You must bear in mind that the principle behind the Act is to release information unless there is a good reason not to.

Arguments in maintaining exemption:

To justify withholding information, the public interest in maintaining the exemption would have to outweigh the public interest in disclosure. Note that the wording of the test refers to the public interest in maintaining the exemption (or exclusion). In other words, you cannot consider all the arguments for withholding the information (or refusing to confirm whether it is held), only those which are inherent in the exemption or exclusion i.e. relate directly to what it is designed to protect.

The FOIA requires the authority to consider whether "in all the circumstances of the case", the public interest in maintaining the exemption outweighs the public interest in disclosure. This means that although an authority may have a general approach to releasing certain types of information, and this may be helpful from an administrative point of view, this should not prevent them from considering the balance of public interest in the individual circumstances of each request.

Arguments in favour of disclosure:

General public interest in transparency. The public interest arguments in favour of maintaining an exemption must relate specifically to that exemption, but this is not necessarily the case when considering the arguments in favour of disclosure.

There is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.

Public interest in the issue. As well as the general public interest in transparency, which is always an argument for disclosure, there may also be a legitimate public interest in the subject the information relates to. If a particular policy decision has a widespread or significant impact on the public, for example changes to the education system, there is a public interest in furthering debate on the issue. So, this can represent an additional public interest argument for disclosure. If a major policy decision is being taken, there may also be a contrary argument that information should not be disclosed because of the need for a safe space in which to formulate and develop policy.

Public interest in the information. In addition to the general public interest in transparency and accountability, and any public interest arising from the issue concerned, there may be a specific public interest in disclosing the information in question. This will of course depend on the circumstances of the case.