



## Information Governance Policy (including Freedom of Information)

<b>Date First Published</b>	<b>June 2016</b>
<b>Version</b>	<b>3</b>
<b>Date Last Approved</b>	<b>23rd May 2018</b>
<b>Review Cycle</b>	<b>1 Year</b>
<b>Review Date</b>	<b>May 2019</b>

“Learning together; to be the best we can be”

# 1. Introduction & Aim

1.1. Information and personal data are major assets that Nexus Multi Academy Trust has a responsibility and requirement to protect, and, where required by law, to publish. The aim of this policy can be described as:

- To provide a framework for the management of information requests made to Nexus MAT, and the management and protection of personal data held by Nexus MAT.
- To assist staff to meet the presumption in favour of disclosure of information, as required by legislation, to promote greater openness, provide increased transparency of decision making and build public trust and confidence.
- To ensure all legal obligations on Nexus MAT are met including confidentiality of information relating to such areas as personal privacy, commercial sensitivity, security issues, and where disclosure would not be in the public interest.

# 2. Scope

2.1. This policy relates to all academies and settings across Nexus MAT and supersedes any local policies and procedures that have been in use prior to the academy conversion. Where required, an individual Nexus MAT academy – in agreement with the Trust Chief Executive Officer - may publish a supplementary policy guidance document or procedure in line with this policy, to ensure that any idiosyncrasies associated with that specific academy are covered in their local policy library.

2.2. The policy applies to all:

- Information and personal data held by Nexus Multi Academy Trust whatever format in which it is held;
- Locations from which Trust systems are accessed (including home use or other remote use). Where there are links to enable partner organisations to access Trust information, prior assurance must be

obtained that information security risks have been identified and suitably mitigated.

### 3. Applicability

3.1. This policy applies to all information and personal data held by Nexus Multi Academy Trust and its constituent academies and other connected organisations. Information and personal data can take many forms and includes, but is not limited to, the following:

- Hard copy data printed or written on paper;
- Data stored electronically;
- Communications sent by post / courier or using electronic means;
- Stored tape or video recordings;

### 4. Review and maintenance

4.1. This policy is agreed and distributed for use across Nexus Multi Academy Trust by the Chief Executive Officer and the Trust Board. It will be reviewed annually.

### 5. Need for an Information Governance Policy

5.1. The information and personal data stored in the Trust's manual and electronic information systems represent an extremely valuable asset on which is placed an ever-increasing reliance for the effective delivery of services to children and young people. The value of and our reliance on our information makes it necessary to ensure that:

- All systems, manual or electronic, that create, store, archive or dispose of information or personal data are developed, operated, used and maintained in a safe and secure fashion;

- The public and all users of the Trust's information systems are confident of the confidentiality and accuracy of the information and personal data used;
- All legislative and regulatory requirements are met;
- All transmission and essential sharing of information with partners, be that in manual or electronic format, is properly authorised and effected within agreed sharing protocols.

## 6. Legal Requirements

6.1. Nexus Multi Academy Trust is obliged to comply with all relevant UK and EU information legislation. This requirement to comply is devolved to Trust Directors, staff, contractors or others permitted to use information and personal data held by the Trust, who may be held personally accountable for any breaches of personal data security for which they may be held responsible.

6.2. Nexus Multi Academy Trust shall comply with the following legislation and other legislation as appropriate:

- Freedom of Information Act 2000
- The Data Protection Act (1998)
- Human Rights Act (1998)
- Regulation of Investigatory Powers Act (2000)
- Protection of Freedoms Act (2012)
- General Data Protection Regulation (2018)

6.3. Nexus Multi Academy Trust supports the objectives of the Freedom of Information Act 2000, the Data Protection Act 1998, General Data Protection Regulation (2018) and other legislation relating to Data Processing and information access, including the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Protection of Freedoms Act 2012. This policy aims to assist staff with meeting their statutory and other obligations which covers the issues of Information Governance.

6.4. As per the General Data Protection Regulation (2018), as a public authority Nexus MAT is required to have a named Data Protection Officer. The named individual at Nexus is as follows:

**Mr Warren Carratt**  
**(Chief Executive Officer)**  
**Email: [CEO@NexusMAT.org](mailto:CEO@NexusMAT.org)**

## 7. Objectives

**7.1.** The policy is intended to establish and maintain the security and confidentiality of personal data, and provide a framework for maintaining the normal business activities of Nexus Multi Academy Trust by:

- Creating and maintaining within the organisation a level of awareness of the need for Freedom of Information and Data Protection as an integral part of the day to day business;
- Ensuring that all data users are aware of and fully comply with the relevant legislation as described in policies and fully understand their own responsibilities;
- Ensuring that all information users are aware of the rights of requesters in accessing Trust information under the Freedom of Information Act 2000;
- Ensuring that all data users are aware of the rights of data subjects in accessing and correcting their personal data under the Data Protection Act 1998 and the General Data Protection Regulation (2018);
- Protecting sensitive personal data from unauthorised disclosure;
- Safeguarding the accuracy of information;
- Protecting against unauthorised modification of information;
- Storing, archiving and disposing of sensitive and confidential information in an appropriate manner;

### **7.2. Lawful use or sharing of Nexus MAT information**

**7.2.1.** Nexus Multi Academy Trust will achieve this by ensuring that:

- Confidentiality of personal data and exempt information is assured;
- Regulatory and legislative requirements are met;

- All transmission and essential sharing of information internally or with partners, in manual or electronic format, is properly authorised and affected within agreed sharing protocols and security controls;
- Freedom of Information and Data Protection training is provided;
- All losses of personal data, actual or suspected, are reported, investigated and any resulting necessary actions taken;
- Standards, guidance and procedures are produced to support this policy.

## 8. Responsibilities

8.1. The Trust Board has overall responsibility for Information Governance within Nexus Multi Academy Trust, with delegated responsibilities to Headteachers for their academy of responsibility. However, the accountability for lawful compliance is held by the Trust's named Data Protection Officer (DPO). The Trust's named DPO is **Mr Warren Carratt (Chief Executive Officer)**, Email: [CEO@NexusMAT.org](mailto:CEO@NexusMAT.org).

8.2. The Trust Board is responsible for:

- Developing, implementing and maintaining the Trust: Data Protection & General Data Protection Regulation Statement; Information Governance & Freedom of Information policy; and other relevant policies, procedures and standards that underpin the effective and efficient creation, management, dissemination and use of personal data;
- Provision of professional guidance on all matters relating to Freedom of Information and Data Protection;
- Oversight of all information data protection breaches and suspected breach investigations;
- Oversight of all information requests under the Freedom of Information Act 2000, Data Protection Act 1998, General Data Protection Regulation (2018) and any subsequent appeals and complaints to the Information Commissioner's Office (ICO).

### 8.3. All Headteachers will:

- Implement this policy within their academy;
- Ensure compliance to it by their staff;
- Additionally they will specifically ensure that:
  - All current and future users of Trust information are instructed in their data protection responsibilities and have access to and have read the Information Governance Policies and guidance;
  - Authorised users of computer systems/media are trained in their use and comply with policy and procedural controls to protect personal data;
  - Determine which individuals are given authority to access specific information systems. The level of access to specific systems which contain personal data should be on a job function need, irrespective of status;
  - Any breach of this policy, real or suspected, is reported as required in the Information Security Incident Reporting Policy.

## 9. Freedom of Information Principles

### 9.1. Nexus Multi Academy Trust is committed to an access to information framework that ensures:

- All requests for information are dealt with promptly and within statutory timescales;
- Advice and assistance is offered to help any enquirer frame their request so that they receive the information they require;
- Requests are assessed to ensure the confidentiality of personal or commercially sensitive data is not breached;
- Information is withheld if a legitimate exemption applies and the application of the exemption is explained to the enquirer;
- All enquirers are kept informed in a timely manner of the progress of their request and of any delays to which it may be subject;
- Assistance is offered to any enquirer to help them understand the information they receive;
- All enquirers are advised of their rights to question the information received and know what has not been provided and why;

- All enquirers are advised of their right to take any appeal or complaint to an internal review process (where appropriate) or to the Information Commissioner, if they are dissatisfied with the service received or the information provided;
- All requests are monitored and performance reported to the Trust Board to ensure compliance with the legislation;
- All staff are provided with suitable training, guidance and procedures to enable them to manage requests for information;

9.2. The Chief Executive Officer is responsible for the management and monitoring of all requests for information made under the legislation;

9.3. The Chief Executive Officer is responsible for ensuring the access to information process is regularly audited to ensure compliance with statutory requirements, and that relevant national codes of practice are followed.

## 10. Processing Freedom of Information Requests

10.1. All Requests for information should be made via the online form on the Nexus Multi Academy Trust website, [www.nexusmat.org](http://www.nexusmat.org).

10.2. Guidance notes are available as appendices to this policy.

10.3. The Trust will make the information available to the requestor within the statutory 20 working days unless a Public Interest Test (PIT) is necessary. If a PIT is necessary the requestor will be notified that the time limit will be extended by another 20 days.

10.4. If the Trust considers that an exemption applies and does not consider that disclosure is appropriate, the requestor must also be informed of this within 20 working days of making the request.

10.5. If an exemption is considered to apply, the decision not to disclose information should be made by the academy, in consultation with the Data Protection Officer, and the reasons for non-disclosure documented.

- 10.6. Requests will be authorised by the relevant Headteacher, after consultation with the relevant Chair of Local Governing Body (where required) and the DPO, before release to the requester.
- 10.7. The Trust Board will be informed of any request relating to their duties by the Chief Executive Officer.

## 11. Vexatious Requests

- 11.1. Before applying section 14 and deeming a request vexatious under the Freedom of Information Act 2000, the Headteacher will consult the Data Protection Officer for their advice. The advice of the DPO should always be followed. In circumstances where the Headteacher and DPO disagree, the matter should be referred to the Chief Executive Officer in writing.

## 12. Data Protection Principles

- 12.1. All organisations that 'process' 'personal data' are data controllers and are required to be registered with the Information Commissioner.
- 12.2. Nexus Multi Academy Trust will adopt a "best practice" approach at all times based on the Information Commissioner's guidelines, and, where appropriate, professional codes of practice.
- 12.3. Any data controller must observe the eight Data Protection principles which govern the manner in which data is collected, held and processed, as follows:

### **1. Processed fairly and lawfully**

Information will only be held where it is justified to do so and processing may be carried out where one of the following conditions has been met, namely where:-

- The individual has given their consent to the processing
- The processing is necessary for the performance of a contract
- The processing is required as part of a legal obligation
- The processing is necessary to protect the vital interests of an individual

- The processing is necessary in order to pursue legitimate interests

## **2. Processed only for the specified lawful purposes and not processed in any way incompatible with those purposes**

Nexus Multi Academy Trust is one data controller. Personal data held by the Trust can be used within the Trust. This however must be on a 'need to know' basis and appropriate security and access controls implemented where necessary so only staff that need access to the personal data are allowed it.

All requests for information from other public bodies, including the police, are to be in writing except in an emergency.

When receiving requests for personal data, clarification must be obtained as to who the requesting party is the reason why information is requested and if there is authority to give the personal data.

## **3. Adequate, relevant and not excessive in relation to the purpose(s) for which personal data is processed**

Nexus Multi Academy Trust will only hold the minimum personal information necessary to enable it to perform its functions.

## **4. Accurate and kept up-to-date**

All efforts will be made to ensure that information is periodically assessed for accuracy and is kept up to date.

## **5. Processed no longer than is necessary for the purpose(s)**

Information must be destroyed once it is no longer required.

## **6. Processed in accordance with the rights of the data subject**

The Trust recognises the rights given to people under the Data Protection Act 1998 including the right to access information, the right to have inaccurate information corrected or erased and the right to entitlement to compensation should any damage be suffered as a result of any breach of the Data Protection Act 1998 principles.

## **7. Protected by appropriate and organisational measures**

Nexus Multi Academy Trust has systems in place to keep information secure. Staff must refer to the Trust's Information Security Policy.

## **8. Not transferred to any country outside the EU unless that country has an 'adequate level of protection' in respect of data protection**

Nexus Multi Academy Trust operates its own website which is obviously accessible by countries outside the EU and which involves the transferring of data on an international basis. The website provides structured information about the Trust, its staff and the services which the Trust provides. Where personal data regarding individuals is published on the website, consent from the data subject must be obtained prior to any personal details being published

There may also be times when Nexus Multi Academy Trust will receive a specific request to transfer specific data to another country. If this situation arises, the necessary enquiries will be made as to whether the transferee country has adequate data protection. If not, information will not be transferred. Data can, however, be transferred to any country, even if outside the EU, if the data subject has given their consent to disclose.

**12.4.** The General Data Protection Regulation (2018) provides the following rights for individuals:

- 12.4.1.** The right to be informed;
- 12.4.2.** The right of access;
- 12.4.3.** The right to rectification;
- 12.4.4.** The right to erasure;
- 12.4.5.** The right to restrict processing;
- 12.4.6.** The right to data portability;
- 12.4.7.** The right to object;
- 12.4.8.** Rights in relation to automated decision making and profiling.

## **13. Sensitive Personal Data**

**13.1.** There are additional requirements placed upon the data controller where the holding of 'sensitive personal data' is concerned. The definition of 'sensitive personal data' is data in respect of: -

- racial or ethnic origin
- political opinion
- religious belief
- union membership

- physical/mental health
  - sexual life
  - commission of offences
  - proceedings for offences and sentences of Court.
- 13.2. If disclosing sensitive personal data (even if required to do so by law) consent of the data subject must be obtained unless a specific exemption applies. If an exemption is considered to apply, it may be prudent to inform the data subject of the information given to the third party and the reason why such information has been disclosed. This decision should be made at senior level and the reasons for disclosure well documented.
- 13.3. Additionally, if sensitive personal data is held, security measures for holding such data will need to be considerably higher than that for other service areas holding less sensitive data.

## 14. Subject Access Requests – Data Controller Responsibilities

- 14.1. Under the General Data Protection Regulation (2018), data subjects have the right to know what information is held about them. This is known as a Subject Access Request.
- 14.2. All Requests for information under Subject Access should be sent at first instance to the responsible Headteacher of the academy.
- 14.3. The Headteacher will oversee completion of the response and usually allocate the work to a member of the academy staff who is also (typically) a member of the Senior Leadership Team.
- 14.4. The academy will respond within the statutory time limit of 30 calendar days by making the information available to the data subject.
- 14.5. If Nexus Multi Academy Trust considers that an exemption applies and does not consider that disclosure is appropriate, the data subject must also be informed of this within 30 days of making the request.

- 14.6. If an exemption is considered to apply, the decision not to disclose information should be made in consultation with the Chief Executive Officer, and the reasons for non-disclosure documented.
- 14.7. In considering whether to disclose information, Nexus Multi Academy Trust must take care not to reveal the identity of another third party individual. Any information supplied by a third party should not usually be revealed without first seeking permission from the source.

## 15. s29 Requests (exemptions for Prevention of Crime)

- 15.1. Wherever possible s29 requests should be submitted in writing.
- 15.2. Police officers should submit s29 requests on their own s29 form, countersigned by their superior officer.
- 15.3. If any Nexus staff member is in doubt about releasing information under s29 in an emergency, they must contact the Headteacher who may seek legal advice.

## 16. s35 Requests (Legal Proceedings)

- 16.1. Wherever possible s35 requests should be submitted in writing.

## 17. CCTV Requests

- 17.1. Requests for CCTV footage should be submitted in writing and will be dealt in the same way as a Data Subject Access Request.
- 17.2. The Trust has a separate CCTV policy.

## 18. Requests made on the Behalf of Children

- 18.1. A request for information may be made by a parent, guardian or agent on behalf of another individual.
- 18.2. Requests made on behalf of others will be dealt with as above, however great care should be taken to verify the identity of those making the request if there is any doubt. It should be ascertained if the person making the request on behalf of the child has parental responsibility, or consent from the child (where the child is old enough).
- 18.3. Nothing should be disclosed to a third party which would not be in any child's best interests to do so. This includes where information is requested on the child's behalf by any parent or Guardian. The decision as to what not to disclose should be made by the Headteacher in consultation with the Chief Executive Officer and the reasons for any non-disclosure documented.
- 18.4. Requests for educational records should be processed under The Education (Pupil Information) (England) Regulations 2005

## 19. Requests Made by Children

- 19.1. Requests by children can be made. Any child may be allowed to see their own records unless it is obvious that they do not understand what they are asking for.
- 19.2. Nothing is to be disclosed to a child which would be likely to cause serious harm to their physical or mental health. The decision as to what not to disclose should be made by the Headteacher in consultation with the Chief Executive Officer and the reasons for any nondisclosure documented.

- 19.3. In addition, the usual principles of subject access requests as outlined in this policy will apply.
- 19.4. Requests for educational records should be processed under The Education (Pupil Information) (England) Regulations 2005

## 20. Disclosure to a third Party

- 20.1. Any request for data received from a third party should be in writing and the third party must be identified. Where the third party seeks to rely on a legal authority for disclosure, they must quote the relevant authority.
- 20.2. Unless an exemption applies (see below), personal data will not usually be disclosed, except where the data subject consents to such disclosure.
- 20.3. 'Third party' includes members of a data subject's family, legal representatives of a data subject, a data subject's employer and any organisations acting on behalf of an individual such as the Citizen's Advice Bureau.
- 20.4. Requests for access from a third party should be accompanied by either an Authority to Disclose from the data subject or in the absence of this necessary enquiries should be undertaken by the Headteacher to ascertain if consent is given. If there is any doubt, written confirmation direct from the Data Subject should be sought.
- 20.5. The 30-day time limit also applies to requests for data from a third party, including the requirement to inform why a decision for not disclosing is made and the reasons for doing so. Again, this decision should be taken by a senior member of staff and the reasons for not disclosing documented and made clear to the third party.
- 20.6. Nothing should be disclosed which would be likely to cause serious harm to a child's or vulnerable adult's physical or mental health. In all requests for access, the interests of the subject, particularly in the case

of a child or vulnerable adult must be paramount and the duty of the Trust to protect children from potential harm of primary importance.

- 20.7. Requests for educational records should be processed under The Education (Pupil Information) (England) Regulations 2005

## 21. Exemptions

- 21.1. The rights of data subjects are subject to certain statutory exemptions. Nexus Multi Academy Trust will disclose personal information, without the data subject's consent in accordance with the Data Protection Act (1998) and General Data Protection Regulation (2018).

- 21.2. This includes but is not limited to: -

- On production of a court order for disclosure;
- Where the purpose of disclosure would be to prevent or detect a crime, apprehend or prosecute offenders;
- By order of the Secretary of State;
- Where the Trust is obliged by any law to disclose information;
- Where information is required for research purposes providing such data is general and does not cause damage or distress to the data subject;
- Where disclosure would be to safeguard national security.

## 22. Security

- 22.1. Personal data will only be kept for as long as the service provided to the data subject is in existence or is as required by law. If there is no legal requirement to keep the records, they will be destroyed as soon as is practicable in line with the Trust's Retention and Deletion Policy.
- 22.2. In the event that employees take home manual or computerised files containing data, it is the employee's responsibility to ensure that such data and equipment is made secure.

- 22.3. Any data protection breach must be reported immediately to the Headteacher and the Chief Executive Officer.

## 23. Information Sharing

- 23.1. Nexus Multi Academy Trust will require its partners and agents through contractual terms, partnership agreements and information sharing agreements to comply with the law when providing services to and when sharing data with the Trust.
- 23.2. Employees responsible for procurement of services must ensure that privacy impact assessments are carried out, potential bidders are compliant with data protection requirements and the necessary Data Processing Agreements are put in place when contracts are awarded.
- 23.3. Employees responsible for services which share personal data with outside partners and agencies must ensure that a written Information Sharing Agreement is in place.
- 23.4. The Information Sharing Agreement must be agreed by the Headteacher who will record a copy centrally for monitoring purposes.
- 23.5. The Information Sharing Agreement must be signed by the relevant Headteacher or other executive officer.

## 24. Use of Personal Data in Marketing

- 24.1. Personal Data collected by Nexus Multi Academy Trust will only be used for marketing purposes where customers have been told about this and have expressly consented to receive such information. Individuals must opt in to such services and not be asked to opt out only.
- 24.2. All emails sent to customers for marketing purposes will include a 'how to opt-out' message.

## 25. Compliance with Legislation

- 25.1. Nexus Multi Academy Trust expects all employees to comply fully with this policy, the Freedom of Information and Data Protection principles, other information legislation and Trust's Employee Code of Conduct.
- 25.2. Individual employees are affected in the same way as the Trust as a whole. Anyone contravening the Freedom of Information Act (2000) and/or Data Protection Act (1998)/General Data Protection Regulation (2018) could be held personally liable and face court proceedings for certain offences which may result in a fine and / or a criminal record.
- 25.3. The Chief Executive Officer can recommend academies which are causing concern over Freedom of Information and/or Data Protection compliance to Internal Audit for further investigation.

## 26. Complaints

- 26.1. Complaints relating to any information access request or data protection matter should be made in writing and addressed to:

Chief Executive Officer  
Nexus Multi Academy Trust  
C/O Hilltop School, Larch Road  
Maltby, Rotherham  
S66 8AZ

- 26.2. If the applicant is still unhappy following the appeal decision they should be advised to write to:

The Office of the Information Commissioner  
Wycliffe House, Water Lane  
Wilmslow, Cheshire  
SK9 5AF

# Appendix A- Exemptions

## Exemptions

There are two types of exemptions within the Freedom of Information Act. These are absolute exemptions and qualified exemptions.

### **Absolute Exemptions**

Where an absolute exemption applies, the information does not have to be supplied. The following are absolute exemptions:

#### **Information accessible by other means (Section 21)**

Where information is available to the applicant by other means, it should not be dealt with as an FOI request. This does not mean that the Trust should not supply the information, but that it is dealt with in a different way or is already publicly available for example on the website. The Trust does, however, need to offer advice and assistance on how to obtain the information.

#### **Information supplied by, or relating to, bodies dealing with security matters (Section 23)**

Applies to information supplied by or relating to one of the security bodies listed in this section of the Act.

#### **Court Records (Section 32)**

Information in documents created for the purpose of legal proceedings, filed with the court, or held by other bodies conducting an inquiry or arbitration. Applicants need to apply to the court or other body for access to these records.

#### **Parliamentary Privilege (Section 34)**

This applies only to information privileged in either House of Parliament and it is unlikely the Trust would hold such information.

#### **Personal Information (Section 40)**

- 1.1. Where the applicant requests personal information about themselves, this is exempt from FOI but must be dealt with as a subject access request under the Data Protection Act (refer to Data Protection policy) or where a person requests personal information about someone else, refer to the qualified exemption below. Requests for educational records should be processed under The Education (Pupil Information) (England) Regulations 2005

## Appendix A- Exemptions

### **Information Provided in Confidence (Section 41)**

This applies if releasing the information would amount to an actionable breach of confidence at the time the request is made (i.e. a breach of confidence that could result in legal action for damages or to obtain an injunction). The Trust may need to consult with the third party who provided the information.

### **Prohibitions on Disclosure (Section 44)**

Where the disclosure of information is prohibited under other legislation, is incompatible with any European Community obligation, or if disclosure would be a contempt of court.

### **Qualified Exemptions**

Where a qualified exemption applies, a public body must disclose information unless it decides that the public interest in maintaining the exemption outweighs the public interest in disclosing it.

### **Information intended for future publication (Section 22)**

Where the Trust plans to publish the information in the near future, and it is reasonable to require the applicant to wait until it is published.

### **National Security (Section 24)**

Where information is required for safeguarding national security.

### **Defence (Section 26)**

Where disclosure of information is likely to prejudice national defence or the armed forces.

### **International Relations (Section 27)**

Where disclosure would be likely to prejudice the UK's international relations or interests.

### **Relations within the UK (Section 28)**

Where disclosure would be likely to prejudice relations between the UK administrations (Scottish, Welsh and NI assemblies).

### **The Economy (Section 29)**

## Appendix A- Exemptions

Where disclosure would be likely to prejudice the economic interests of the UK or the financial interests of the government or UK administrations (Scottish, Welsh and NI assemblies).

### **Investigations & Proceedings Conducted by Public Authorities (Section 30)**

Information relating to criminal investigations and proceedings conducted by Nexus Multi Academy Trust.

### **Law Enforcement (Section 31)**

Where information isn't exempt under Section 30 but where disclosure may prejudice:

- the prevention or detection of crime, the apprehension or prosecution of offenders,
- the assessment or collection of a tax or duty, the exercise by a public authority of its functions for law enforcement, regulatory activity or health and safety.

### **Communication with Her Majesty & Honours(Section 37)**

Applies to information relating to communications with Her Majesty or the royal household or regarding the conferring of honours.

### **Health & Safety (Section 38)**

Where disclosure of information may endanger the physical or mental health or safety of any person.

### **Personal Information (Section 40)**

An absolute exemption applies where the applicant requests personal information about themselves, as this must be dealt with as a subject access request under the Data Protection Act (refer to Data Protection policy).

Further consideration is required where an applicant asks for personal information about someone else, and the Data Protection principles must be considered.

### **Legal Professional Privilege (Section 42)**

Where data consist of information where a claim to legal professional privilege could be made in legal proceedings, i.e. the data consist of confidential discussions between a legal advisor and a client

## Appendix A- Exemptions

### **Commercial Interests (Section 43)**

Where disclosure would prejudice the commercial interests of any person or reveal trade secrets.

## Appendix B- Refusals

### Refusals

There are a number of benefits to issuing detailed refusal notices. Better refusal notices may result in fewer complaints as details will have been explained better to requestors. Also, the Information Commissioner's Office and the Information Tribunal will review the refusal notice when dealing with a complaint saving us time when responding to them.

When refusing information, an applicant is entitled to be told whether the Trust hold the information (our duty to confirm or deny), unless to do so would disclose exempt information.

The Trust can refuse a request for the following reasons:

- The request is a repeat request;
- The request is vexatious, manifestly unfounded or excessive;
- The request is over the cost limit;
- The information is exempt

A refusal notice must be issued within 20 working days of receipt of the request. Refusal notices must explain to requestors why the information can't be provided; must contain details of the appeals process (the complaints procedure); and details of the right of appeal to the Information Commissioner's Office.

#### **Repeat Requests**

If a previous request for information from the same person has already been dealt with by the authority, there is no need to supply the information again in response to an identical or very similar request, unless a reasonable length of time has elapsed between receipt of the first and second requests.

The Trust must send a refusal notice advising the applicant that the Trust considers the request to be a repeat request. A refusal notice does not need to be sent if the Trust has already issued a notice in respect of a similar or identical repeat request from the same applicant.

#### **Vexatious Requests**

The term vexatious refers to the information request itself, not the applicant. A person cannot be defined as a vexatious requestor and all requests for information from that person refused. If the request appears designed to cause major inconvenience, harassment or expense, and would require a substantial diversion of

## Appendix B- Refusals

resources or otherwise undermine the work of the Trust, the request can be deemed to be vexatious. A person can make as many requests for information as they wish<sup>1</sup>, but if a request is not a genuine endeavour to access information the request may be termed vexatious.

The Trust must send a refusal notice advising the applicant that the Trust considers the request to be a vexatious request and why. However, a refusal notice does not need to be sent if the Trust has already issued a notice in respect of a similar vexatious request from the same applicant.

### **The Cost Limit is Exceeded**

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 specify a cost limit for dealing with requests. If it would cost more than £450 in staff time to 'locate and retrieve' the information, the Trust can refuse to supply it on grounds of cost. The £450 has to be calculated at a rate of £25 per hour, not at the actual hourly rate of pay.

The Trust must use the correct wording in the refusal notice and explain why it would take so long to obtain the information.

### **Exemptions**

Where the Trust relies on an exemption, it must quote the exemption and section and the reasons why the exemption applies.

### **Absolute Exemptions**

Where an absolute exemption applies, the information does not have to be supplied. An applicant is still entitled to be told whether we hold the information, unless to do so would disclose exempt information.

### **Qualified Exemptions**

When using a qualified exemption, the Trust must consider the public interest when deciding whether to withhold or disclose information. The refusal notice must explain which exemption applies and why, and also the public interest arguments in reaching the decision.

It is not sufficient just to state that it is not in the public interest to disclose information or just list the factors involved. A refusal notice must outline the

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<sup>1</sup> Please note, multiple requests from the same persons/groups may exceed cost ceilings defined in fees regulations.

## Appendix B- Refusals

reasoning followed to reach the decision and why certain factors outweigh others. Please see example below.

### **Prejudice based exemptions**

Where an exemption is prejudice based, the Trust must explain why disclosure would adversely affect the situation. For example, if the Trust are relying on Section 30 (Investigations and proceedings by a public authority), it must explain why disclosing the information would adversely affect the investigation (unless to do so would prejudice the investigation).

### **Example of a Refusal Notice**

An FOI applicant asks for a report on the financial planning of an academy in the Trust. The report is in draft form but is due to be published in eight weeks.

The information requested would therefore be exempt under Section 22 of the FOI Act (information intended for future publication) but this is a qualified exemption and the Trust would therefore need to carry out a public interest test and convey the details to the applicant in the refusal notice.

-----  
Dear Mrs Smith

#### Freedom of Information Act 2000 – Request for Information

I refer to your request for information regarding the draft report into the XXX academy budget. I confirm that a search for information has been completed and the Trust does hold that information.

This information will not be provided to you at this time as it is exempt under Section 22 of the above Act (information intended for future publication). This exemption has been applied because the information is due to be published in eight weeks' time following the Trust Board Meeting on 16<sup>th</sup> November.

Section 22 is a qualified exemption under the above Act and we are obliged to consider whether disclosure of the information would be in the public interest, before refusing to supply the information.

We have therefore considered the public interest in disclosing the information and I can provide the following details:

## Appendix B- Refusals

### 1. Factors for withholding information

- the draft report contains figures and statistics and some factual information which has not yet been checked. Before the report is published this information will be subject to thorough scrutiny. The details in the draft report may therefore be misleading and unreliable at this time;
- the draft report also cross refers to another report which is not yet complete and will be published at the same time, after completion and checking;
- publication of the report at this stage may result in numerous queries which we are not in a position to give accurate responses to until the report is finalised;
- publication of the report is in accordance with the Trust's reporting requirements in line with the EFA. Prior publication would render this policy inaccurate.

### 2. Factors for disclosing information

- the report is of significant interest and the contents of it will directly affect children and families,
- to release the report would be in the spirit of openness and transparency in which the Trust operates.

As you can see from the above, the reasons for withholding information outweigh those for disclosing it. There is a clear intent by the Trust to publish the report on the date specified, thereby satisfying the requirement for openness and the report will then be accurate and complete giving a full and clear picture of the redevelopment.

If you are not satisfied with this response you have the right to an internal review by the Trust. Please contact us via Clerk to the Trust Board, Nexus Multi Academy Trust, c/o Hilltop School, Larch Road, Maltby, Rotherham, S66 8AZ.

If you are not satisfied with the internal review, you can appeal to the Information Commissioner. Contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF, telephone 01625 545 700. Alternatively go to [www.informationcommissioner.gov.org](http://www.informationcommissioner.gov.org)

## Appendix B- Refusals

Yours sincerely

## Appendix C-The public interest

### The public interest

The public interest test needs to be considered only where a qualified exemption applies. The Trust must decide whether the interests of the public would be better served by withholding or disclosing the information requested.

The question of where the public interest lies has been considered by the Courts and they have often made a distinction between what is in the public interest and things that merely interest the public. This has been most notable in cases regarding personal privacy (e.g. *Campbell v MGN & A v B & C (No 2)*).

The FOI Act is designed to promote greater openness and the following public interest factors must be considered regarding disclosure:

- promoting public debate in current issues
- accountability in decision making by public authorities
- accountability in the spending of public money
- allowing the public to understand decisions which affect their lives
- allowing decisions to be challenged
- raising awareness of public safety issues and environmental issues

The Act itself favours disclosure, so information should be disclosed unless there is an overriding public interest in keeping certain information confidential.

# Appendix D: Procedure for dealing with requests for information



## Procedure for dealing with requests for information

The Freedom of Information Act applies to all public authorities and gives a right of access to information to any person, whether an individual or a legal entity (subject to certain exemptions).

All requests for information must be considered under this procedure.

### **1. Request Received**

The request must contain a name, a return address for correspondence, and a description of the information required. Any written request for recorded information is potentially a Freedom of Information Act request - there is no need for the applicant to refer to the FOI Act.

Remember that the Trust normally only have 20 working days to respond to a request.

### **2. Identify whether the request is an FOI, EIR or DP request or that the information is available through the Publication Scheme, or elsewhere.**

The Trust has a duty to offer advice and assistance to an applicant when they make a request for information so it must advise the applicant how they can obtain information. The Trust may contact the applicant if there is a requirement to clarify exactly what they require. However, they are under no obligation to tell the Trust why they want the information.

**Routine requests** - if the request is very straightforward and easy to deal with (for example, the applicant just wants a particular leaflet, asks for contact details, opening hours etc) – then the academy can deal with it and won't log it as an FOI request.

**FOI Requests** - where the requests are more complex, for example, where a large volume of information is requested, where consultation about disclosure will be necessary or where we may need to consider refusal – these must be logged as FOI requests.

**Audit & Accounts information** – refer to the Academies Financial Handbook and seek advice from the Chief Finance Officer.

# Appendix D: Procedure for dealing with requests for information

## Summary of Requirements of Legislation

Access Regime	Subject Matter	Time Limit	Cost	Exemptions
Freedom of Information	Any information not accessible under DPA or EIR	20 working days from receipt of request	No fee for information requests which cost less than £450, but can charge for disbursements, i.e. photocopying, postage.	23 exemptions of two types:  1. Absolute  2. Qualified – subject to a public interest test
Data Protection	Applicants own personal information	30 calendar days	None	Limited range of exemptions, not subject to a public interest test

### 3. Identify whether a request is vexatious or repeated.

The Act states that there is no obligation to comply with vexatious or repeat requests.

#### Vexatious Requests

There is no definition of vexatious within the Act. However, if a request 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 Trust, then it may be considered a vexatious request. A vexatious request is determined by the information requested, not the requestor.

#### Repeat Requests

If the Trust has already responded to a request for information from an applicant, it does not need to respond to an identical or very similar request, unless a reasonable length of time has elapsed.

# Appendix D: Procedure for dealing with requests for information



## 4. Acknowledgement / Confirm or Deny / Invalid Request

Establish whether the Trust hold the information and estimate the cost of providing it. If the cost of retrieving the information is deemed to be unreasonable, it is not a valid request and the Trust must advise the applicant of this. However, the Trust has a duty to offer advice and assistance and may be able to provide some of the information within the cost limit. If the disbursement cost exceeds £25 the Trust may charge the applicant.

**Acknowledgement** - if the request is definitely an FOI request, the Trust should acknowledge the request in writing and advise when the information will be provided. If the request is repeat or vexatious, or information is already accessible elsewhere, the Trust must inform the applicant of this.

**Confirm or Deny** - there is a duty within the Act to confirm or deny that the Trust hold the information (subject to exemptions) – this should be done within the acknowledgement letter or the full response letter.

If the information has to be considered under a qualified exemption, then the timescale can be extended by a 'reasonable' period where necessary. This should only be done where the Trust genuinely needs extra time to consider the public interest test. Although there is no statutory time limit on how long the reasonable period may be, the Trust must give the applicant an estimate of the date by which it expects to reach a decision.

## 5. Record request details

The Trust must keep a full record of the request and the response.

## 6. Inform Officers/Members

If the request is from the media, the academy must inform the Chief Executive Officer that the request has been received. If the request is likely to involve disclosure of information which could be deemed to be controversial or is likely to result in public debate, then Trust Directors and Members should be informed by the CEO. This is not to prevent information being disclosed or to ask for permission to disclose information but to allow Directors and Members to prepare for any queries arising from release of information or refusal of the request.

## 7. Obtain the Information

# Appendix D: Procedure for dealing with requests for information



Every effort must be made to obtain all the information requested, by contacting relevant individuals and searching both manually and electronically held records. It is a criminal offence to destroy information rather than respond to a request.

## **8. Edit information where Exemptions apply**

**Exemptions** - there are a number of exemptions within the Act, where the Trust can withhold certain information. Employees should check whether any of the exemptions apply when deciding what to provide to the applicant

**Personal details** – Employees must be extremely careful about information relating to other individuals, as this may breach the Data Protection Act if you supply this information. Take further advice from the legal department if necessary.

**Advise applicant** - where exemptions have been applied, employees of the Trust must explain to the applicant why the information cannot be provided . It is not sufficient to reiterate an exemption word for word from the Act. In the event of a complaint, the Information Commissioner will look at the grounds for refusal which have been specified to the applicant. The letter should say which exemption applies and why. Where a qualified exemption applies, the letter must explain why it is in the public interest to withhold information.

**Editing documents** - the applicant is entitled to information, not to particular documents. Therefore, employees can edit documents and provide copies or type information onto another document. The best way to edit paper documents is to tippex out the information on one copy, then provide a photocopy of this to the applicant.

**Format** – applicants are able to request information in any format. If employees consider the request to be 'reasonable', then it must be provided it in that format.

## **9. Explain codes and abbreviations**

Employees must explain any coded items or abbreviations to the applicant.

## **10. Include cost information in the response letter.**

In order to keep requestors aware of the costs to the Trust of making requests, it is Trust policy to include cost details in the response. This is the actual cost of dealing with the request. The Trust will calculate the cost details using the FOI calculator (available on the FOI intranet page) by inputting the names, grades and time spent for each person who has completed tasks to enable the response to be sent.

# Appendix D: Procedure for dealing with requests for information



## **10. Take a Copy**

Employees should keep a full copy of the information sent so that the Trust can identify what has been edited or withheld in the event of a complaint. In the event of a complaint, the Information Commissioner will require a full record of the request, how it has been dealt with, and the response.

## Appendix E: Complaints

### Complaints

Any complaints regarding requests for information, or the application of the exemptions, must be dealt follows:

**1. Send the complaint to:**

The Chief Executive Officer  
Nexus Multi Academy Trust  
c/o Hilltop School  
Larch Road  
Maltby  
Rotherham  
S66 8AZ

**Stage 1** – the complaint will be passed to a member of the executive leadership team not previously involved in the request, to review the exemptions applied or investigate how the request was dealt with.

**Stage 2** – the complaint will be passed to Director of the Trust Board to review.

If the applicant is still not satisfied with the outcome, they will be advised to contact the Information Commissioner’s Office and request that they conduct an assessment. Complainants should be advised to contact:

Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

If correspondence is received from the Information Commissioner’s Office please send it immediately to the Trust’s Chief Executive Officer (address details above).

## Appendix F: Contracts

### Contracts

Many public sector contracts were made prior to the introduction of FOI and contain confidentiality clauses. However, most contain an overriding statement to the effect that, if we are required by law to disclose information, we will do so.

Increasingly, information about public sector spending will have to be made available and contractors should be made aware that we may not be able to withhold information regarding their business.

A public authority cannot 'contract out' of its responsibilities under FOI and must release information unless an exemption applies. During the tendering process or formulation of a contract, discussion should take place with the other party about what information they consider to be confidential and a commissioner should ensure that they only obtain information needed for the process.

The Section 43 exemption (Commercial Interests) may be relevant as well as Section 41 (Information provided in Confidence), and Section 44 (Prohibitions on Disclosure).

Additionally, personal information obtained as part of a contractual relationship, may be exempt under Section 40.

## Appendix G: Fees

### Fees

#### **Maximum Costs**

When a request is received, the Trust will need to estimate whether the cost of complying with the request will exceed the appropriate cost limit which is £450 (based on the amount applicable to Local Authorities). The costs can only be calculated at a rate of £25 per hour staff time as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If the request will exceed the limit, it is not a valid request and the Trust can refuse to deal with it.

For the purpose of the estimate, only the following may be taken into account:

- a. Determining whether information is held;
- b. Locating the information (or documents containing the information);
- c. Retrieving the information (or documents containing the information);
- d. Extracting the information from a document containing it.

#### **Requests as Part of a Campaign**

Where 2 or more requests are made by one person, or by different person who appear to be acting in concert or in pursuance of a campaign, the estimated cost of complying with the requests is the total cost of complying with them all.

This applies where:

- a. The two or more requests relate, to any extent, to the same or similar information, and
- b. Those requests are received within any period of 60 consecutive days

#### **Charges which can be made - Disbursements**

The maximum fee which can be charged to an applicant is the costs incurred in:

- a. Informing the applicant whether it holds the information;
- b. Communicating the information to the applicant;

This will include:

- a. Providing the information in a format requested by the applicant;
- b. Reproducing any document containing the information;
- c. Postage or other means of transmitting the information.

## Appendix G: Fees

N.B. This cannot include costs of staff time spent on these activities.

Costs should be calculated based on the following:

- Black & White desktop prints - 3.1p
- Black & White MFD prints/copies – 2.445p
- Colour prints/copies – 20p

### **Charging the requestor**

In exceptional circumstances, the Trust reserves the right to charge a reasonable fee where the request is manifestly unfounded or excessive.

## Appendix H: Photographs

### Photographs

This Good Practice Guidance is aimed at those working within schools. It gives advice on taking photographs in educational institutions and whether doing so must comply with the Data Protection Act 1998.

#### **Recommended Good Practice**

The Data Protection Act is unlikely to apply in many cases where photographs are taken in schools and other educational institutions. Fear of breaching the provisions of the Act should not be wrongly used to stop people taking photographs or videos.

Where the Act does apply, a common sense approach suggests that if the photographer asks for permission to take a photograph, this will usually be enough to ensure compliance.

- Photos taken for official academy use may be covered by the Act and pupils and students should be advised why they are being taken.
- Photos taken purely for personal use are exempt from the Act.
- Photos taken by the media are usually exempt from the Act.

#### **Examples**

Personal use:

- A parent takes a photograph of their child and some friends taking part in the academy Sports Day to be put in the family photo album. These images are for personal use and the Data Protection Act does not apply.
- Grandparents are invited to the academy nativity play and wish to video it. These images are for personal use and the Data Protection Act does not apply.

Official school use:

- Photographs of pupils or students are taken for building passes. These images are likely to be stored electronically with other personal data and the terms of the Act will apply.
- A small group of pupils are photographed during a science lesson and the photo is to be used in the academy prospectus. This is unlikely to be personal data and the Act wouldn't apply.

## Appendix H: Photographs

### Media use:

A photograph is taken by the local newspaper of an academy awards ceremony. This is unlikely to be covered by the Act. Even if it were covered, personal data processed for journalistic purposes are exempt from the main provisions of the Act. However, as there may be concerns in individual cases about pictures appearing in the press, it would be good practice for academies to advise people that the press will be attending certain events.

### Consent

Wherever possible, consent should always be sought by the academy from a child's parent/carer before taking or using photographs of their child.

In some cases – such as where subject to child protection plans or where children are looked after – there will be sensitivities or even legal restrictions, and the academy Headteacher should always ensure that individual circumstances are taken into account and respected at all times.

### Further Information

If you require any further information about this or any other aspect of Data Protection, please contact us using the details below:

Web: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)

Telephone: 0303 123 1113