

# SHERBORNE AREA SCHOOLS' TRUST



SHERBORNE AREA SCHOOLS' TRUST

## Freedom of Information Policy

<b>Published:</b>	<b>01 June 2017</b>
<b>Revised:</b>	<b>25 May 2018</b>
<b>Review due:</b>	<b>June 2019</b>
<b>Author:</b>	<b>Head of HR</b>

## **SHERBORNE AREA SCHOOLS TRUST (SAST) FREEDOM OF INFORMATION POLICY**

### **1. Introduction**

SAST is committed to transparency in its dealings with the public and fully embraces the aims of the Freedom of Information Act 2000 and the provisions of the General Data Protection Regulations 2016 (GDPR). The School will make every effort to meet its obligations under the respective legislation and will regularly review procedures to ensure that it is doing so.

The underlying principle of this policy is that the public have a right to access to recorded information held by the Trust and that SAST should seek to promote an open regime regarding access to information, subject to the exemptions contained within the relevant legislation.

Separate guidance, in the form of operating procedures, has been given to staff in the staff handbook on how to handle information requests received under the FoIA regime

### **2 Background**

The FoIA applies to all public authorities and came fully into force on 1<sup>st</sup> January 2005. It provides the public with a statutory right of access to recorded information held by authorities, subject to certain exemptions, within twenty working days. The Act is fully retrospective and applies to all information that falls within the scope of the Act, not just information created from 1<sup>st</sup> January 2005. Section 19 of the Act also obliges the School to make information pro-actively available in the form of an approved “publication scheme”.

In addition, individuals currently have a statutory right of access to their own “personal data” under the GDPR. Individual access rights to personal data are extended by the FoIA through the provisions of the GDPR.

The EIR provides a statutory right of access to “environmental information”, as defined in these regulations. The EIR came into force on 1<sup>st</sup> January 2005 and replaces the existing 1992 Regulations. The EIR are also fully retrospective.

The Government’s Information Commissioner enforces these three information regimes.

Each regime contains certain categories of exempt information, where information can be withheld. Any decision to withhold information under an exemption can be referred by the applicant to the Information Commissioner, who can overturn any decision to withhold information. For the purposes of this policy, the “public” is defined as any individual or organisation anywhere in the world and an “information request” refers to any request for recorded information made under the FoIA, EIR or DPA.

### **3 Timescales**

Freedom of Information requests should be dealt with within 20 working days, excluding school

holidays.

Subject access requests should be dealt with within one month of the. The deadline can be extended to two months where the request is complex, but explanation for the extension must be confirmed within one calendar month.

Requests for pupil education records should be dealt with within 15 school days.

#### **4 Delegated responsibilities**

Overall responsibility for ensuring that SAST meets the statutory requirements of the FoIA, EIR and GDPR lies with the Board of Trustees and the Chair of Trustees has overall responsibility for information management issues. They have delegated the day-to-day responsibility of implementation to the Executive Head and school Head teachers.

The Executive Head is assisted by the Trust Data Protection Officer who currently fulfils the role of 'Fol Officer'. All SAST staff are responsible for ensuring that they handle requests for information in compliance with the provisions of the various Acts, taking advice from the Fol officer where necessary.

#### **5 Scope**

This policy applies to all recorded information held by SAST that relates to the business of the Schools within the Trust. This includes:

- Information created and held by schools within the Trust
- Information created by SAST schools and held by another organisation on our behalf
- Information held by the SAST Schools provided by third parties, where this relates to a function or business of the SAST Schools (such as contractual information) and
- Information held by SAST Schools relating to Trustees and Governors where the information relates to the functions or business of the SAST Schools.

This policy does not cover personal written communications (such as personal e-mails sent by staff). The Trust's Data Protection Policy establishes the standards regarding the use of "personal data" (as defined in the GDPR).

#### **6 Requesting information**

##### **6.1 Procedures**

Practical procedures for handling information enquiries in line with the relevant legislation will be produced and copies can be obtained from the Trust's Fol Officer.

SAST has a duty under both the FoIA and EIR to provide advice and assistance to applicants making information requests. This includes assisting the applicant in making the application for information. Although no such duty exists under the GDPR, the same level of care will be provided.

##### **6.2 Charges**

The three information regimes contain different provisions that permit charges to be made for responding to information requests. The Board of Trustees may charge a fee for complying with requests, as calculated in accordance with FoIA regulations. If a charge is to be made, SAST will give written notice to the applicant before supplying the information requested.

The Trust will only charge for the cost of copying and transmitting information, not for time taken in reaching decisions regarding whether information is covered by an exemption.

Where SAST estimates that the cost of locating the information will exceed the statutory threshold of £450, it will consider whether or not to comply with the request. The Trust is not obliged to comply with such a request but may choose to do so.

The General Data Protection Regulations requests for personal data are free, unless the request is '*manifestly unfounded or excessive*'. The Trust can charge a '*reasonable fee*' for multiple requests.

### **6.3 Publication**

Section 19 of the FoIA obliges SAST to make information pro-actively available in the form of a "publication scheme". This scheme will list categories, or "classes" of information that will routinely be made available without the need for a specific information request. SAST will indicate in the scheme where it wishes to charge for providing particular categories of information. The scheme is published on the Trust's website.

SAST plans to review this scheme regularly. Whenever any information is provided in response to a recorded FoIA enquiry, the Trust will assess whether the information is suitable for wider publication. In general, there will be a presumption in favour of publishing such information on the SAST website.

## **7 Withholding Information**

The Freedom of Information Act contains 23 exemptions whereby information can be withheld. There are two categories; absolute and non-absolute. SAST will only withhold information if it falls within the scope of one or more of these exemptions.

Where an absolute exemption applies, the Trust can automatically withhold the information. However, where the exemption is non-absolute the information can only be withheld where SAST decides that the public interest is best served by withholding the information. Certain exemptions also contain a "prejudice test", which means that the exemption can only be claimed if disclosing the information would prejudice the interest protected by the exemption.

SAST will only withhold information covered by the exemption. Complete files or documents will not be withheld just because part of the information is covered by an exemption.

SAST will only apply an exemption where it has reason to believe that prejudice might occur to the interest protected by the exemption. In addition, wherever a "public interest" exemption is being considered, SAST will only withhold that information which it can demonstrate that the public interest will be best served by withholding. When considering withholding information under a non-absolute exemption SAST will take into account whether the release of the information would:

- promote further understanding of current issues of public debate;
- promote the accountability of decisions taken by the Trust and the spending and allocation of public money;
- bring to light matters of public safety;
- allows the public to understand and challenge decisions made by the Trust;
- be otherwise in the public interest.

Where information is withheld under an exemption in most cases the reason behind the decision will be made clear to the applicant, citing the exemption under which the information is being withheld. The applicant will also be given details of the right to challenge the decision through the SAST Board and the right of appeal to the Information Commissioner's Office.

Where a staff member plans to apply an exemption, he/she will consider whether other Trusts hold similar information. If this is considered likely, he/she may contact the relevant Trust(s) or Schools to ensure that a consistent response is provided to the applicant.

The School will also refuse to supply information under the FoIA, where the request is considered "vexatious" or "repeated" and under the EIR, where the request is considered 'manifestly unreasonable'.

## **8 Releasing a third party's information**

Where, in response to a request, information belonging to a third party (either an individual or other organisation) has to be considered for release, the staff member that received the request will seek input from the FoI officer prior to the release of the information.

The release of third party information will be considered carefully to prevent actions for breach of confidence or, in the case of living individuals, breaches of the GDPR. Both the EIR and FoIA permit information to be withheld when its release would breach the provisions of the GDPR.

When the requested information relates to a living individual and amounts to "personal data" as defined in the GDPR, its disclosure could breach the GDPR. Therefore the release of third party personal information relating to living individuals will be considered in accordance with the data protection principles and, in particular, the "third party" provisions of the GDPR.

Where appropriate, SAST will contact the individual to ask for permission to disclose the information. If consent is not obtained, either because it was not considered appropriate to approach the third party or the third party could not be contacted or consent is refused. The Trust will then consider if it is reasonable to disclose the information, taking into account:

- any duty of confidentiality owed to the third party
- the steps taken to seek consent
- whether the third party is able to give consent and
- any express refusal of consent

The decision to disclose third party information will also take into account the impact of disclosure on the third party, relative to the impact on the applicant of withholding the information. Where the third party has been acting in an official, rather than private capacity, SAST will be minded to disclose the information, although decisions will be made on a case by case basis.

Where the information relates to a staff member, the provisions of the GDPR will still apply in many circumstances but the nature of the information will influence the Trust's decision whether to release the information. Where the information relates to a matter clearly private to the individual, e.g. a disciplinary hearing, the information will almost certainly be withheld. However, where the information relates to the member of staff acting in their official capacity, e.g. an expenses claim, the information will normally be released. The exemption relating to the release of a third party's personal data will not be used to withhold information about administrative decisions taken by the Trust.

As the GDPR only relates to living individuals, the exemption relating to Data Protection under both the EIR and FoIA will not apply to information held about the deceased. Where the request might be controversial, the staff member will seek input from the FoI officer who will take advice from the Board of Trustees where necessary.

Where the third party is an organisation, rather than an individual, the provisions of GDPR 2016 will not apply. SAST will consider consulting the third party concerning the release of their information where:

- the views of the third party may assist the Trust to decide whether an exemption under the Act applies to the information and
- in the event of the public interest test being applied, where the views of the third party may assist the School to make a decision relating to where the public interest lies.

Consultation will not be undertaken where:

- the Trust will not be disclosing the information due to some valid reason under the Act
- the Trust is satisfied that no exemption applies to the information and therefore cannot be withheld and
- the views of the third party will have no effect on the decision e.g. where there is other legislation preventing disclosure

Where input from a third party is required, the response time for the request remains the same. Therefore it will be made clear to the third party at the outset that they have a limited time for their views to be provided and that where responses are not immediate, the decision to disclose may have to be made without their input in order for the School to comply with the statutory time limits dictated by the legislation.

The Trust will endeavour to inform individuals and organisations submitting information that the information might be released following an information request and, where appropriate, will provide the supplier of the information opportunity to request confidentiality or supply reasons as to why the information should be treated confidentially.

## **9 Information held within contracts with the Trust**

Any contractual information, or information obtained from organisations during the tendering process, held by the School are subject to the provisions of the FoIA and EIR. Whenever the Trust enters into contracts, it will seek to exclude contractual terms forbidding the disclosure of information beyond the restrictions contained in the legislation. A standard form of wording will be included in contracts to cover the impact of FoIA and EIR in relation to the provision of information held in contracts.

The Trust can withhold contractual information where its disclosure under either the FoIA or EIR

could be treated as actionable breach of confidence. Where the Trust intends to include non-disclosure provisions in a contract, it will agree with the contractor a schedule of the contract that clearly states which information should not be disclosed.

The Trust will only agree to enter into confidentiality clauses where the information is confidential in nature and that it is confident that the decision to restrict access to the information could be justified to the Information Commissioner.

Where information is not covered by the exemption relating to information accepted in confidence, a further exemption specifically under FoIA may be relevant, relating to commercial interests. This exemption is subject to a “public interest” test. Whenever the Trust has to consider the release of such information, it will contact the relevant organisation to obtain its opinions on the release of the information and any exemptions they may think relevant. However, the Trust will make the final decision relating to the disclosure of the information.

The Trust can also withhold information contained in contracts where any of the other exemptions listed in the FoIA or EIR are appropriate, although information will only be withheld in line with the School’s policy on the use of exemptions. All future contracts should contain a clause obliging contractors to co-operate fully and in a timely manner where assistance is requested in responding to an FoIA or EIR request.

## **10 Complaints procedure**

Whenever the Trust withholds information under an exemption, or for any other reason, it will inform the applicant of their right to complain about the decision through the School’s complaints procedure and of the right of appeal to the Information Commissioner. Any complaint received will be dealt with in accordance with the Trust’s complaints procedure as detailed in its Complaints Policy. If the result of the complaints is that any decision to withhold information be overturned, this information will be supplied as soon as it is possible.

## **11 Requests made under the General Data Protection Regulations**

The General Data Protection Regulations entitles an individual to his or her ‘personal data’, as defined in that legislation, where the information is held on an automated system, such as a computer and also manual files, where they amount to what the GDPR describes as an “accessible record” or in a structured filing system, defined in the GDPR as a “relevant filing system”.

The parental right to receive information pertaining to the “educational record” of their child should continue to be administered under the Education (Pupil Information) (England) Regulations 2000. Whenever a request for personal data is received and is not covered by these regulations, the request will be administered in accordance with the relevant section of the Trust’s FoIA operating procedures.

Whenever a request is made under the GDPR for personal data, the Trust will provide the applicant with the relevant information contained within files relating to that individual that is accessible under both the GDPR and FoIA, subject to any exemptions.

Where it is not possible to remove third party information without rendering the response useless to the individual, the provision of third party information will be considered in line with section 7 of this policy regarding the disclosure of third party information.

The GDPR contains the provision for numerous types of exemption. Therefore, whenever a member of staff is considering applying an exemption, he/she will seek the opinion of the FoI officer.

## **12 Illegal actions**

It is a criminal offence under any of the three information regimes for members of staff to alter, deface or remove any record (including e-mails) following receipt of an information request. Both the FoIA and EIR contain specific provisions to make such action a criminal offence.

## **13 Review of the Policy**

This policy is scheduled for review by The Sherborne Area Schools Trust. Comments from staff, parents and members of the public on this policy and its implementation are welcome and can be addressed to:

Bella Byrne  
Trust Data Protection Officer  
Sherborne Area Schools' Trust  
The Gryphon School  
Bristol Road  
Sherborne  
Dorset  
DT9 4EQ