



## **FREEDOM OF INFORMATION POLICY**

### **Philosophy**

Cambridge Tutors College is committed to the Freedom of Information Act 2000 and to the principles of accountability and the general right of access to information, subject to legal exemptions. This policy outlines Cambridge Tutors College's response to the Act and a framework for managing requests. It should be read in conjunction with our Data Protection Policy.

### **Background**

The Freedom of Information Act 2000 (Fol) came fully into force on January 1 2005. Under the Act, any person has a legal right to ask for access to information held by the College. They are entitled to be told whether the College holds the information, and to receive a copy, subject to certain exemptions. The information which the College routinely makes available to the public is included in the Data Protection Policy. Requests for other information should be dealt with in accordance with the statutory guidance. While the Act assumes openness, it recognises that certain information is sensitive. There are exemptions to protect this information.

The Act is fully retrospective, so that any past records which the College holds are covered by the Act. The DfES has issued a Retention Schedule produced by the Records Management Society of Great Britain, to guide educational institutions on how long they should keep records. It is an offence to wilfully conceal, damage or destroy information in order to avoid responding to an enquiry, so it is important that no records that are the subject of an enquiry are amended or destroyed.

Requests under Fol can be addressed to anyone in the College; so all staff need to be aware of the process for dealing with requests. Requests must be made in writing, (including email), and should include the enquirers name and correspondence address, and state what information they require. They do not have to mention the Act, nor do they have to say why they want the information. There is a duty to respond to all requests, telling the enquirer whether or not the information is held, and supplying any information that is held, except where exemptions apply. There is no need to collect data in specific response to an Fol enquiry. There is a time limit of 20 days excluding College holidays for responding to the request.

### **Scope**

The Freedom of Information Act (Fol) joins the Data Protection Act as legislation under which anyone is entitled to request information from the College.

Requests for personal data are still covered by the Data Protection Act. (DPA) and have been updated by the UK General Data Protection Regulation (UK GDPR), tailored by the Data Protection Act 2018.

Individuals can request to see what information the College holds about them. This is known as a Subject Access Request, and must be dealt with accordingly.

## **Obligations and Duties**

We recognise our duty to:

1. 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.
2. 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.

## **Dealing with Requests**

We will respond to all requests in accordance with the procedures laid down in Appendix 1.

We will ensure that all staff are aware of the procedures.

## **Exemptions**

Certain information is subject to either absolute or qualified exemptions. The exemptions are listed in Appendix 2. When we wish to apply a qualified exemption to a request, we will invoke the public interest test procedures to determine if public interest in applying the exemption outweighs the public interest in disclosing the information. We will maintain a register of requests where we have refused to supply information, and the reasons for the refusal. The register will be retained for 5 years.

## **Public Interest Test**

Unless it is in the public interest to withhold information, it has to be released. We will apply the Public Interest Test before any qualified exemptions are applied. For information on applying the Public Interest Test see Appendix 3.

## **Charging**

We reserve the right to refuse to supply information where the cost of doing so exceeds the statutory maximum ([ioc.org.uk](http://ioc.org.uk))

## **Complaints**

Any comments or complaints will be dealt with through the College's normal complaints procedure. We will aim to determine all complaints within 14 days of receipt. We will publish information on our success rate in meeting this target. The College will maintain records of all complaints and their outcome. If on investigation the College's original decision is upheld, then the College has a duty to inform the complainant of their right to appeal to the Information Commissioner's office.

Appeals should be made in writing to the Information Commissioner's office. They can be contacted at:

FOI/EIR Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

## Appendix 1: Procedure for dealing with requests:

## Appendix 2: Exemptions

### Exemptions to Release of Information:

1. Although decisions on disclosure should be made on a presumption of openness, the FOI Act recognises the need to preserve confidentiality and protect sensitive material in some circumstances.
2. You cannot withhold information in response to a valid request UNLESS one of the following applies:
  - a. an exemption to disclosure, or
  - b. the information sought is not held, or
  - c. the request is considered vexatious or repeated or
  - d. the cost of compliance exceeds the threshold (see Annex B)

### The duty to confirm or deny

3. A person applying for information has the right to be told if the information requested is held by the College, and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known as the College's "duty to confirm or deny" that it holds the information. However, the College does not have to confirm or deny if:

- a. the exemption is an absolute exemption (see paragraph 6), or
- b. in the case of qualified exemptions (see paragraph 8), confirming or denying would itself disclose exempted information

### Exemptions

4. A series of exemptions are set out in the Act which allow the withholding of information in relation to an enquiry. Some are very specialised in their application (such as national security) and would not usually be relevant to the College. There are more than 20 exemptions but CTC is likely to use only a few of them.

5. There are two general categories of exemptions:

Absolute: where there is no requirement to confirm or deny that the information is held, disclose the information or consider the public interest; and

Qualified: where, even if an exemption applies, there is a duty to consider the public interest in disclosing information

### What are the Absolute Exemptions?

6. There are 8 absolute exemptions listed in the Act. Even where an absolute exemption applies:

- a. 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
- b. there is still a legal obligation to provide reasonable advice and assistance to the enquirer

7. The absolute exemptions in the Act are set out below. Those which might be relevant to CTC are marked with an \*:

#### 7.1 Information accessible to the enquirer by other means\*

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.

#### 7.2 Information dealing with security matters.

This applies to information directly or indirectly supplied by, or relating to, bodies dealing with security matters such as GCHQ, MI5, M16, Special Forces and the National Criminal Intelligence Service.

#### 7.3 Court records.

This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.

#### 7.4 Parliamentary Privilege

This exempts information if it is required for the purpose of avoiding an infringement of the Parliamentary privilege. Parliamentary privilege is an immunity whereby MPs cannot be prosecuted for sedition or sued for libel or slander over anything said during proceedings in the House.

#### 7.5 Prejudice to the effective conduct of public affairs.

This relates to the maintenance of the collective responsibility of Ministers.

#### 7.6 Personal information\*

Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act. Consult your existing College Data Protection guidance.

#### 7.7 Information provided in confidence\*

This relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person.

#### 7.8 Prohibitions on disclosure\*

Information is exempt where its disclosure is prohibited under any other legislation by order of a court or where it would constitute a contempt of court or where it is incompatible with any EC obligation.

### What are the Qualified Exemptions?

8. With qualified exemptions, even if it is decided that an exemption applies, there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing information. Guidance on carrying out the public interest test is at Annex C. The qualified exemptions in the Act are set out below. Those which might be relevant to Colleges are marked with an \*:

#### 8.1 Information intended for future publication\*

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.

#### 8.2 National security

Information is exempt for the purposes of safeguarding national security.

#### 8.3 Defence

Information is exempt if its disclosure would prejudice the defence of the UK.

#### 8.4 International relations

Information is exempt if its disclosure would or would be likely to, prejudice relations between the UK and any other state, international organisation.

#### 8.5 Relations within UK

Information is exempt if its disclosure would or would be likely to, prejudice relations between any administration in the UK i.e. the Government, Scottish Administration, Northern Ireland Assembly, or National Assembly of Wales.

#### 8.6 The economy

Information is exempt if its disclosure would, or would be likely to, prejudice the economic or financial interests of the UK

#### 8.7 Investigations and proceedings conducted by public authorities\*

Information is exempt if it has at any time been held by the College for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.

#### 8.8 Law enforcement\*

Information which is not exempt under Section 8.7, may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others:-

Note the following:-

- a. the intended publication does not have to be by the College, it can be by another person or body on behalf of the College
- b. the date of publication does not have to be known, it could be at some future date (although it is recommended that some idea of a likely date is given)
- c. the duty to confirm or deny does not apply if to do so would involve the disclosure of any of the relevant information
- d. the prevention or detection of crime
- e. the apprehension or prosecution of offenders
- f. the administration of justice
- g. 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
- h. any civil proceedings brought by or on behalf of the College which arise out of an investigation carried out for any of the purposes mentioned above.

The duty to confirm or deny does not arise where prejudice would result to any of these matters.

#### 8.9 Audit Functions

Information is exempt if its disclosure would, or would be likely to, prejudice the exercise of an authority's functions in relation to the audit of the accounts of other public authorities. It does not apply to internal audit reports.

#### 8.10 Formulation of government policy

Information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (eg Attorney General) and the operation of any Ministerial private office

#### 8.11 Prejudice to the conduct of public affairs

Information likely to prejudice the maintenance of the convention of the collective responsibility of Ministers or likely to inhibit the free and frank provision of advice or exchange of views

#### 8.12 Communications with the Queen\*

Information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

#### 8.13 Health and Safety\*

Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

#### 8.14 Environmental information\*

Information is exempt under FOI where it is covered by the Environmental Information Regulations. Environmental information can cover information relating to air, water, land, natural sites, built environment, flora and fauna, and health. It also covers all information relating to decisions or activities affecting any of these.

#### 8.15 Personal information\*

Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act, or the data protection principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data Protection Act. The duty to confirm or deny does not arise in relation to this information if doing so would be incompatible with any of the above.

#### 8.16 Legal professional privilege\*

Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally such information will be privileged. For CTC to disclose the information it will need to seek consent from the provider of the advice. This exemption covers all such information where a claim to legal professional

privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.

#### 8.17 Commercial interests\*

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 College). The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret.

#### Protective Markings and Applying Exemptions

9. When considering if an exemption to disclosure should apply, bear in mind that the presence of a protective marking (Restricted, Confidential or Secret, with or without descriptors such as Staff, Management, Commercial etc) does not constitute an exemption and is not in itself sufficient grounds on which to prevent disclosure. Each case must be considered on its merits.

#### Timing

10. Where information has previously been withheld, it must not be assumed that any subsequent requests for the same information will also be refused. Sensitivity of information decreases with age and the impact of any disclosure will be different depending on when the request is received. Therefore, for each request, it will be necessary to consider the harm that could result at the time of the request and, while taking into account any previous exemption applications, each case should be considered separately.

#### Next steps

11. In all cases, before writing to the enquirer, the SLT, given responsibility for FOI by the College will need to ensure that the case has been properly considered, and that the reasons for refusal, or public interest test refusal, are sound.

### Appendix 3 - Applying the Public Interest Test

#### Background

1. Having established that a qualified exemption(s) definitely applies to a particular case, you must then carry out a public interest test to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. Therefore, unless it is in the public interest to withhold the information, it has to be released. Although precedent and a developed case law will play a part, individual circumstances will vary and each case will need to be considered on its own merits.

#### Carrying out the test

2. It is worth noting that what is in the public interest is not necessarily the same as that which may be of interest to the public. It may be irrelevant that a matter may be the subject of public curiosity. In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one. Applying such a test depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in the College and possibly wider. Factors that might be taken into account when weighing the public interest include:

Is disclosure likely to increase access to information held by the College? Is disclosure likely to distort public reporting or be misleading because it is incomplete? Is disclosure likely to give the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions? Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving? Is disclosure likely to improve the accountability and transparency of the College in the use of public funds and help to show that it obtains value for money? Is disclosure likely to cause unnecessary public alarm or confusion? Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy? Is disclosure likely to seriously jeopardise the College's legal or contractual position? Is disclosure likely to increase public participation in decision-making? Is

disclosure likely to infringe other legislation e.g. Data Protection Act? Is disclosure likely to increase public participation in political processes in general? Is disclosure likely to create a controversial precedent on the release of information or impair your ability to obtain information in the future? Is disclosure likely to bring to light information affecting public safety? Is disclosure likely to adversely affect the College's proper functioning and discourage openness in expressing opinions? Is disclosure likely to reduce further enquiries on the topic? If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose?

3. Note also that:

- a. potential or actual embarrassment to, or loss of confidence in, the College, staff or governors is NOT a valid factor
- b. the fact that the information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information
- c. the potential harm of releasing information will reduce over time and should be considered at the time the request is made rather than by reference to when the relevant decision was originally taken
- d. the balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but on certain higher order considerations such as the need to preserve confidentiality of internal discussions
- e. a decision not to release information may be perverse i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party?

4. You will need to record the answers to these questions and the reasons for those answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. You need to decide how important each factor is in the circumstances and go on to make an overall assessment.

For Disclosure

5. Where the balance of the public interest lies in disclosure, the enquiry should be dealt with and the information required should be made available. Where the factors are equally-balanced, the decision should usually favour disclosure.

Against Disclosure

6. After carrying out the public interest test if it is decided that the exemption should still apply, proceed to reply to the request.

There will be occasions when it has been decided that a qualified exemption applies but consideration of the public interest test may take longer. In such a case, you must contact the enquirer within 20 working days stating that a particular exemption applies, but including an estimate of the date by which a decision on the public interest test will be made. This should be within a "reasonable" time - in practice, it is recommended this decision is made and communicated within the 20 days but where not possible it is suggested that no more than 10 working days beyond the 20 days should be allowed.

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