

THE SPECIAL PARTNERSHIP FREEDOM OF INFORMATION POLICY

1. Introduction

The Special Partnership Trust 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 our response to the Act and a framework for managing requests.

2. Background

The Freedom of Information Act 2000 (FoI) 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 school. They are entitled to be told whether the school holds the information, and to receive a copy, subject to certain exemptions.

Anyone can request information – there are no restrictions on your age, nationality or where you live. Your request will be handled under different regulations depending on the kind of information you ask for:

- Data Protection Act if you ask for information an organisation holds about you
- Environmental Information Regulations if you ask for environmental information

The information which, the school routinely makes available to the public is included in the Publication Scheme. Requests for other information should be dealt with in accordance with the statutory guidance. While the Act assumes openness, it recognises that certain information is sensitive. There are exemptions to protect this information.

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

Requests under FoI can be addressed to anyone in the MAT; 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 a FoI enquiry. There is a time limit of 20 days excluding school holidays for responding to the request.

3. Scope

The FoI Act joins the Data Protection Act and the Environmental Information Regulations as legislation under which anyone is entitled to request information from the school.

Requests for personal data are still covered by the Data Protection Act. (DPA). Individuals can request to see what information the school holds about them. This is known as a Subject Access Request, and must be dealt with accordingly.

Requests for information about anything relating to the environment – such as air, water, land, the natural world or the built environment and any factor or measure affecting these – are covered by

the Environmental Information Regulations (EIR). They also cover issues relating to Health and Safety. For example queries about chemicals used in a MAT school or on MAT school land, phone masts, car parks etc. would all be covered by the EIR. Requests under EIR are dealt with in the same way as those under FoI Act, but unlike FoI Act requests, they do not need to be written and can be verbal.

If any element of a request to the MAT includes personal or environmental information, these elements must be dealt with under DPA or EIR. Any other information is a request under FoI Act, and must be dealt with accordingly.

4. Obligations and Duties

The MAT recognises its duty to;

- provide advice and assistance to anyone requesting information. *We will respond to straightforward verbal requests for information, and will help enquirers to put more complex verbal requests into writing so that they can be handled under the Act.*
- tell enquirers whether or not we hold the information they are requesting (the duty to confirm or deny), and provide access to the information we hold in accordance with the procedures laid down in Appendix 1.

5. Publication Scheme

The Special Partnership MAT has adopted the Model Publication Scheme for Schools approved by the Information Commissioner.

The Publication Scheme and the materials it covers will be readily available from the School office. It will also be published on our website.

6. Dealing with Requests

The Special Partnership MAT will respond to all requests in accordance with the procedures laid down in **Appendix 1**.

The Special Partnership MAT will ensure that all staff are aware of the procedures.

7. Exemptions

Certain information is subject to either absolute or qualified exemptions. The exemptions are listed in **Appendix 2**.

When The Special Partnership MAT wishes to apply a qualified exemption to a request, The Special Partnership MAT will invoke the public interest test procedures to determine if public interest in applying the exemption outweighs the public interest in disclosing the information.

The Special Partnership MAT will maintain a register of requests where we have refused to supply information, and the reasons for the refusal. The register will be retained for 5 years.

8. Public Interest Test

Unless it is in the public interest to withhold information, it has to be released. The Special Partnership MAT will apply the Public Interest Test before any qualified exemptions are applied.

9. Charging

We reserve the right to refuse to supply information where the cost of doing so exceeds the statutory maximum, currently £250

10. Responsibilities

Guy Chappell is the nominated member of staff to coordinate enquiries and be a point of reference for advice

11. Complaints

Any comments or complaints will be dealt with through the MAT's normal complaints procedure.

Appendix 1

The Special Partnership Trust Procedures for Responding to Requests for Personal Information in Accordance with the Data Protection Act (1998)

Anybody who makes a request to see their file or their child's file or other personal data held on them is making a request under the Data Protection Act 1998. All information relating to the child including that held in daybooks, diaries and on electronic systems and email should be considered for disclosure.

There is a statutory exception to the above, where parents do have an automatic right to access defined materials under The Education (School Records) Regulations 1989. The school will observe these statutory rights. If there is a current court order which relates to information regarding any child, that order must, regardless of other circumstances, be observed.

Dealing with a Data Protection Request

- A request under the Data Protection Act must be made in writing.
- In many cases a letter to the **Head of School** will be sufficient to identify the information required. If you cannot identify the information required from the initial request you can go back to the applicant to ask for more information.
- The **Head of School** must be confident of the identity of the individual making the request. This could be done by checking signatures against verified signatures on file or by asking the applicant to produce valid identification, such as a passport or photodriving license. These checks should be done in addition to proof of relationship with the child.
- Individuals only have the automatic right to access information about themselves; requests from family members, carers or parents of a minor will have to be considered. The **Head of School** will have responsibility for ensuring the child's welfare is appropriately considered in deciding whether to comply with a request. Normally the requester will have to prove both their relationship with the child and that disclosure is in the child's best interests to the satisfaction of the **Head of School**. In the
- event of a child having sufficient capacity to understand (normally age 12 or above) the **Head of School** should discuss the request with the child and take their views into account when making a decision. There may be circumstance in which a child can refuse their consent to a request.
- The MAT school may charge a statutory fee, currently calculated on a sliding scale, but only if a permanent copy of the information is provided. If a letter is sent out requesting a fee the 40-calendar day statutory timescale does not begin until the fee is received. It is important though that no request is delayed unnecessarily by time taken to inform the applicant of a fee.
- The MAT school will make use of exemptions under the Act as appropriate. All files must be reviewed before any disclosure takes place. **Under no circumstance will access be granted immediately or before this review process has taken place.**
- Where information has been provided to the MAT school by a third party, for example by the local authority, the police, a health care professional or another school, but is held on the MAT school's file it is normal to seek the consent of the third party before disclosing information. This must be done early in the process in order to stay within the 40-day timescale. Even if the third party does not consent or consent is explicitly not given the data may be disclosed. In these cases it may be appropriate to seek additional advice.

- The applicant should be told the data that the MAT school holds, be given a copy of the data, be told the purposes for which it is processed and whether it has been shared with any other party. It is good practice to explain whether data has been withheld and if so why. There may be circumstances where this is not appropriate; the **Head of School** should at all times consider the welfare of the child. The MAT school should also give details of who to contact in the event of a complaint and the details of the Information Commission who can provide independent information.
- Where all the data in a document cannot be disclosed a permanent copy should be made and the data obscured or parts of the data can be retyped if this is more sensible. In any event a copy of the full document (before obscuring) and the altered document should be retained together with the reason why the document was altered. This is so, that in the event of a complaint, there is an audit trail of what was done and why.
- Information can be provided by post (registered mail) or on deposit at the school with an officer available to help the applicant. If the latter is used the applicant must have access to a photocopier in case they want a permanent copy of their data. In considering the method of delivery the views of the applicant should be taken into account. Any codes, technical terms or abbreviations should be explained. Any data which is difficult to read or illegible should be retyped.
- MAT schools should monitor the number of requests received and document whether they are dealt with within the 40-calendar day statutory timescale.
- The Act applies only to living individuals.

Complaints

Complaints about the operation of these procedures should be made to the Chairperson of the Governing Body who will decide if it is appropriate for the complaint to be dealt with under the complaints procedure.

Complaints that are not dealt with under the school's complaint procedure should be forwarded in writing to the MAT Board of Trustees and subsequently the Information Commissioner. It is likely that complaints about procedural issues, due process and timeliness will be dealt with by the Governing Body, complaints that involve consideration of personal data or sensitive personal data should be referred to the Information Commissioner.

Freedom of Information Act 2000.

Appendix 2

Exemptions

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.

The Special Partnership MAT cannot withhold information in response to a valid request UNLESS one of the following applies:-

- an exemption to disclosure, or
- the information sought is not held, or
- the request is considered vexatious or repeated or
- the cost of compliance exceeds the threshold

The duty to confirm or deny

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

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

Exemptions

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

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?

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

- it does not mean that you can't disclose in all cases; it means that disclosure is not required by the Act. A decision could be taken to ignore the exemption and release the information taking into account all the facts of the case
- there is still a legal obligation to provide reasonable advice and assistance to the enquirer

of the absolute exemptions in the Act there are 4 relevant to The Special Partnership MAT, they are set out below.

Information accessible to the enquirer by other means (Section 21)

If information is reasonably accessible to the applicant by another route than the Act, it is exempt information. This is the case even if the enquirer would have to pay for the information under that alternative route. This exemption includes cases where you are required to give information under other legislation, or where the information is available via the Publication Scheme.

Personal information (Section 40) - see also the qualified exemption part of Section 40. Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act. Consult your existing school Data Protection guidance.

Information provided in confidence (Section 41)

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

Prohibitions on disclosure (Section 44)

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

What are the Qualified Exemptions?

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. The qualified exemptions **relevant to The Special Partnership MAT are;**

Information intended for future publication (Section 22)

If at the time the request was made, information is held with a view to publication, then it is exempt from disclosure if it is reasonable that it should not be disclosed until the intended date of publication. This could apply for instance to statistics published at set intervals, for example annually or where information is incomplete and it would be inappropriate to publish prematurely¹. Remember, you still have a legal duty to provide reasonable advice and assistance.

Investigations and proceedings conducted by public authorities (Section 30)

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

Law enforcement (Section 31)

Information which is not exempt under Section 30 Investigations and Proceedings, may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others:-

- the prevention or detection of crime
- the apprehension or prosecution of offenders
- the administration of justice
- the exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, whether circumstances justify regulatory action, ascertaining a person's fitness or competence in relation to their profession, ascertaining the cause of an

accident or protecting or recovering charities or its properties

- any civil proceedings brought by or on behalf of the school which arise out of an investigation carried out for any of the purposes mentioned above.

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

Prejudice to the conduct of public affairs (Section 36) (excluding matters covered by the absolute exemption part of Section 36)

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

Communications with the Queen* (Section 37)

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

Health and Safety (Section 38)

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

Environmental information* (Section 39)

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

Personal information (Section 40) – see also the absolute exemption part of Section 40 Where an individual seeks information about themselves Data Protection Act powers apply. Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act, or the data protection principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data Protection Act. The duty to confirm or deny does not arise in relation to this information if doing so would be incompatible with any of the above.

Legal professional privilege (Section 42)

Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally such information will be privileged. A school wishing to disclose the information will need to seek consent from the provider of the advice. This exemption covers all such information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.

Commercial interests (Section 43)

Information is exempt if it constitutes a trade secret or would be likely to prejudice the commercial interests of any person or body (including the school). The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret.

Protective Markings and Applying Exemptions

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

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

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