



Washwood Heath
Multi Academy Trust

Freedom of Information Policy

Prepared by:	Director of HR in consultation with whole school staff and city-wide unions
Applies to:	Employees at WHMAT Academies
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Links to:	WHMAT GDPR Compliant Data Protection Policy WHMAT Data Retention Policy WHMAT E-Safety Policy WHMAT's Disciplinary Policy & Procedure WHMAT's Employee Code of Conduct ICO's Guidance on Managing Freedom of Information Requests ICO's Model Publication Scheme for Public Authorities
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1.0 Commitment & Policy Aims

- 1.1 The Board of Trustees takes its responsibilities under the *Freedom of Information Act 2000 (the Act)* very seriously.
- 1.2 This Policy provides the framework through which this effective management can be achieved and audited.

2.0 Scope

- 2.1 The purpose of this policy is to ensure that:
 - 2.1.1. The provisions of the Act are adhered to; and in particular, that a significant amount of routinely published information about WHMAT academies is made available to the public as a matter of course through a Publication Scheme; and
 - 2.1.2 That other information not included in the Publication Scheme is readily available on receipt of a freedom of information request and provided to the requestor in a timely manner, provided that it is not covered by a recognised exemption (see appendix 1).
- 2.2 The Policy does not cover requests for access to personal data that WHMAT may hold. Access to personal data is covered under our separate *WHMAT GDPR Compliant Data Protection Policy* (see www.washwoodmat.com).

3.0 Responsibilities

- 3.1 WHMAT recognises its corporate responsibility under the Act to provide a general right of access to information held.
- 3.2 Heads of Academy have overall responsibility for ensuring that freedom of information (FOI requests) are dealt with appropriately in consultation with WHMAT's Director of HR.
- 3.3 WHMAT's Company Secretary is responsible for producing and reviewing WHMAT's Publication Scheme and for supplying any information requested in connection with it (see 5.0 below).
- 3.4 The Director of HR is responsible for preparing and reviewing this Policy and for raising awareness amongst staff.

4.0 Links to WHMAT Policies

- 4.1 This policy links to a number of other WHMAT Policies and procedures (see front page).

5.0 WHMAT's Publication Scheme

- 5.1 WHMAT's Publication Scheme is available at www.washwoodmat.com (policies tab) and is based on the ICO's model publication scheme for public authorities. It specifies a) what information WHMAT will make routinely

available to the public as a matter of course; b) how it will do so, and c) whether or not this information will be made available free of charge or on payment of a fee. (See model publication scheme on WHMAT website)

5.2 The Director of HR and/or WHMAT Company Secretary will:

5.2.1 Publish the ICO's model publication scheme on the WHMAT website.

5.2.2 Provide assistance to persons wishing to access information who are unclear about the process.

5.2.3 Acknowledge access requests within 5 working days of receipt, unless there are exceptional circumstances.

5.2.4 Where further details of the information requested are reasonably needed before the access request can be dealt with, send written communication requesting that information within 5 working days of receipt of the access request.

5.2.5 Where a fee is to be paid, send a letter or email setting out details of the fee to be paid within 5 working days of the receipt of the access request.

5.2.6 Make the information accessible, where possible in the form which the applicant requests, within 20 working days of receipt of the original request.

5.2.7 Notify the person requesting the information that an extension to the timescale may be required either due to the length of time that is required to consider the public interest arguments under the Act in respect of possible disclosure of the requested information or the ability to gather the information within 20 working days.

5.28 Where the information is exempt or the access request is vexatious or repeated, send a refusal notice to the applicant setting out the reason for refusal with, where necessary, the category of exemption claimed, any public interest test considerations and drawing attention to the appeals procedure at appendix 4.

5.29 Where the refusal is on the grounds that the information is available elsewhere, guide the applicant on where to access the information.

5.30 The requestor may appeal against the outcome of their request within 5 working days of receiving the outcome. Any appeal would be heard by the CEO or Deputy CEO in line with the procedure at appendix 4.

6.0 Specific Requests for Information (FOI Requests)

6.1 Information not already made available in WHMAT's Publication Scheme may be accessible through a specific request for information, known as a

“Freedom of Information Request”. In this regard the *Freedom of Information Act* establishes two related rights:

- a) the right to be told whether information requested exists, and
- b) the right to receive the information (subject to the legal exemptions in the Act see appendix 1).

Who can exercise these rights?

6.2 WHMAT could receive a FOI request or a request for information under its publication scheme from anyone who is a natural or legal person, worldwide. They do not have to be UK citizens, or resident in the UK. Freedom of information requests can also be made by organisations, for example a newspaper, a campaign group, or a company. Employees of a public authority can make requests to their own employer, although good internal communications and staff relations will normally avoid the need for this.

Who responds to these requests?

6.3 Requests should be directed to WHMAT’s Director of HR, C/O Burney Lane, Stechford, B8 2AS in the first instance, who may consult WHMAT’s Data Protection Officer (DPO) and/or legal team before sending a formal reply.

What makes a valid request?

6.4 For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff. Any letter or email to a public authority like WHMAT asking for information is a request for recorded information under the Act. However, WHMAT will only treat the request as a FOI request if:

6.4.1 It cannot provide the requested information straight away; or

6.4.2 The requester makes it clear they expect a response under the Act.

What information are requestors entitled to?

6.5 Requestors will not be entitled to information to which any of the exemptions in the Act applies (see appendix 1). However, only those specific pieces of information to which the exemption applies will be withheld, and information covered by an exemption will be subject to review by WHMAT’s Director of HR and a nominated WHMAT Trustee before a response is sent.

Response Times

6.6 WHMAT will respond to any FOI request promptly and within 20 working days, although further reasonable details can be requested in order to identify and locate the information.

6.7 If a fee is required, the period of 20 working days may be extended by up to 3 months until the fee is paid. In line with ICO guidance, WHMAT will count the first working day after the request is received as the first day. Working day

means any day other than a Saturday, Sunday, or public holidays and bank holidays; this may or may not be the same as the days you are open for business or staff are in work. The time allowed for complying with a request starts when WHMAT receives it, not when it reaches the base academy freedom of information officer.

7.0 Charges

7.1 Unless otherwise specified, information made available through WHMAT's Publication Scheme will be free of charge. However, WHMAT reserves the right to charge an appropriate fee for dealing with a specific request for information not listed in the publication scheme in accordance with the Act.

8.0 Complaints

8.1 WHMAT's Company Secretary will co-ordinate any complaints received in respect of this policy in consultation with the Director of HR.

8.2 The complaint should be addressed to the Company Secretary, C/O Burney Lane, Stechford, B8 2AS.

8.3 The complaint will be acknowledged in writing within a reasonable period and every reasonable effort will be made to offer a more comprehensive reply within 21 working days.

8.4 If the applicant is not satisfied with the outcome of the Complaints Procedure, they may seek an independent review from the Information Commissioner at <https://ico.org.uk/concerns/> or via their helpline on 0303 123 1113.

9.0 Refusing a request for information

9.1 A requester may ask for any information that is held by a public authority like WHMAT. However, this does not mean that we are always obliged to provide the information. In some cases, there will be a good reason why we should not provide it (see exemptions at 9.0 below and appendix 1).

9.2 WHMAT can refuse an entire request in the following circumstances:

9.2.1 It would cost too much; or

9.2.2 It would take too much staff time to deal with the request; or

9.2.3 The request is vexatious e.g. the request repeats a previous request from the same person.

9.3 In addition, the *Freedom of Information Act* contains a number of exemptions that allow you to withhold information from a requester. In some cases, it will allow you to refuse to confirm or deny whether you hold information. There are 23 exemptions under the Act, some exemptions where the public interest test applies, and others which are absolute exemptions. The full list of exemptions can be found at Appendix 1 of this policy.

9.4 WHMAT may decide that some information it holds could be regarded as exempt information under the Act. Where a request is made for information which includes exemptions, WHMAT will consider the prejudice test and the public interest test, and may in some circumstances withhold some or all of the requested information.

9.5 If WHMAT believes that an exemption applies or it has another justification for refusing a request, it will notify the requestor of this in writing. This is known as a “refusal notice”. We will issue a refusal notice if we are either refusing to say whether we hold information at all, or confirming that information is held but refusing to release it.

10.0 Audit of Information Requests

10.1 To ensure an audit of requests received under this policy, the Director of HR and Company Secretary will maintain a central spreadsheet confirming a) number of FOI requests received, b) number of requests for information received in line with WHMAT’s Publication Scheme; c) any complaints received about the operation of this policy; and/or d) any appeals heard under this policy, together with outcomes.

10.2 An annual summary will be made available to the Board of Trustees confirming volume of and nature of requests for information received under this policy.

11.0 Policy Review

11.1 This Policy will be reviewed every 24 months by the Director of HR, unless changes to law require an earlier amendment.

Appendix 1

When can we withhold information under an exemption?

Exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest.

The exemptions in *Part II of the Freedom of Information Act* apply to information. This may mean that you can only apply an exemption to part of the information requested, or that you may need to apply different exemptions to different sections of a document.

You do not have to apply an exemption. However, you must ensure that in choosing to release information that may be exempt, you do not disclose information in breach of some other law, such as disclosing personal information in breach of the *Data Protection Act 2018 and/or GDPR*. Nor do you have to identify all the exemptions that may apply to the same information, if you are content that one applies.

You can automatically withhold information because an exemption applies only if the exemption is 'absolute' (see list below). However, most exemptions are not absolute but are 'qualified' (see below). This means that before deciding whether to withhold information under an exemption, you must consider the public interest arguments. This balancing exercise is usually called the public interest test (PIT). The Act requires you to disclose information unless there is good reason not to, so the exemption can only be maintained (upheld) if the public interest in doing so outweighs the public interest in disclosing the information.

A) Absolute Exemptions – those where the public interest test does not apply

Section 21 - Information accessible by other means

This exemption applies if the information requested is already accessible to the requester. You could apply this if you know that the requester already has the information, or if it is already in the public domain. For this exemption, you will need to take into account any information the requester gives you about their circumstances. For example, if information is available to view in a public library in Southampton, it may be reasonably accessible to a local resident but not to somebody living in Glasgow. Similarly, an elderly or infirm requester may tell you they don't have access to the internet at home and find it difficult to go to their local library, so information available only over the internet would not be reasonably accessible to them. When applying this exemption, you have a duty to confirm or deny whether you hold the information, even if you are not going to provide it. You should also tell the requester where they can get it.

Section 23 - National Security

The section 23 exemption applies to any information you have received from, or relates to, any of a list of named security bodies such as the security service. You do not have to confirm or deny whether you hold the information, if doing so would reveal anything about that body or anything you have received from it. A government minister can issue a certificate confirming that this exemption applies.

Section 32 - Court Records

This exemption applies to court records held by any authority (though courts themselves are not covered by the Act).

To claim this exemption, you must hold the information only because it was originally in a document created or used as part of legal proceedings, including an inquiry, inquest or arbitration.

This is an unusual exemption because the type of document is relevant, as well as the content and purpose of the information they hold.

You also do not have to confirm or deny whether you hold any information that is or would fall within the definition above.

Section 34 - Parliamentary Privilege

You can use this exemption to avoid an infringement of parliamentary privilege. Parliamentary privilege protects the independence of Parliament and gives each House of Parliament the exclusive right to oversee its own affairs. Parliament itself defines parliamentary privilege, and the Speaker of the House of Commons can issue a certificate confirming that this exemption applies; the Clerk of the Parliaments can do the same for the House of Lords. A certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliament, in respect of the House of Lords is conclusive proof that the exemption is justified.

Section 36 - Effective Conduct of Public Affairs - so far as relating to information held by the House of Commons or the House of Lords

Section 40(1) – Personal information of the requester

This exemption confirms that you should treat any request made by an individual for their own personal data as a subject access request under the *Data Protection Act 2018*. You should apply this to any part of the request that is for the requester's own personal data. They should not be required to make a second, separate subject access request for these parts of their request. If the information contains some of the requester's personal data plus other non-personal information, then you will need to consider releasing some of the information under the *Data Protection Act* and some under the *Freedom of Information Act*.

Section 40(2) – Data protection

This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the *Data Protection Act 2018*.

If you wish to rely on this exemption, you need to refer to the *Data Protection Act* as the data protection principles are not set out in the *Freedom of Information Act*.

This exemption can only apply to information about people who are living; you cannot use it to protect information about people who have died. The most common reason for refusing information under this exemption is that it would be unfair to the individual concerned.

Section 41 - Information provided 'In Confidence'

This exemption applies if the following two conditions are satisfied:

- you received the information from someone else; and
- complying with the request would be a breach of confidence that is actionable

You cannot apply this exemption to information you have generated within your organisation, even if it is marked “confidential”. However, you can claim it for information you originally received from someone else but then included in your own records. To rely on this exemption, you must apply the legal principles of the common law test of confidence, which is a well-established though developing area of law. This exemption is absolute so you do not need to apply the public interest test. However, you will still need to consider the public interest in disclosure, because the law of confidence recognises that a breach of confidence may not be actionable when there is an overriding public interest in disclosure.

Section 44 - Prohibitions on disclosure

You can apply this exemption if complying with a request for information:

- is not allowed under law;
- would be contrary to an obligation under EU law; or
- would constitute contempt of court.

This exemption is often used by regulators.

Exemptions where the public interest test applies

The exemptions below are qualified by the public interest test.

Section 22 - Information Intended for Future Publication

This exemption applies if, when you receive a request for information, you are preparing the material and definitely intend for it to be published, and it is reasonable not to disclose it until then. You do not need to have identified a publication date. This exemption does not necessarily apply to all draft materials or background research. It will only apply to the material you intend to be published.

You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information.

Section 22A – research information

This exemption applies if, when you receive a request for information,

- you hold information on an ongoing programme of research;
- there is an intention by someone –whether an individual or organisation, private or public sector - to publish a report of the research; and
- disclosure of the information would or would be likely to prejudice the research programme, the interests of participants in the programme, or a public authority holding or intending to publish a report of the research.

So long as the research programme is continuing, the exemption may apply to a wide range of information relating to the research project. There does not have to be any intention to publish the particular information that has been requested, nor does there need to be an identified publication date. You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information.

Sections 24 – national security

The section 24 exemption applies if it is “required for the purpose of safeguarding national security”. The exemption does not apply just because the information relates to national security. A government minister can issue a certificate confirming that this exemption applies and this can only be challenged on judicial review grounds. However, the exemption is qualified by the public interest test.

Sections 26 to 29

These exemptions are available if complying with the request would prejudice or would be likely to prejudice the following:

- defence (section 26);
- the effectiveness of the armed forces (section 26);
- international relations (section 27);
- relations between the UK government, the Scottish Executive, the Welsh Assembly and the Northern Ireland Executive (section 28);
- the economy (section 29); or
- the financial interests of the UK, Scottish, Welsh or Northern Irish administrations (section 29).

Section 30 – Investigations & Section 31 – Prejudice to law enforcement

The section 30 exemption applies to a specific category of information that a public authority currently holds or has ever held for the purposes of criminal investigations. It also applies to information obtained in certain other types of investigations, if it relates to obtaining information from confidential sources.

When information does not fall under either of these headings, but disclosure could still prejudice law enforcement, section 31 is the relevant exemption.

Section 31 only applies to information that does not fall into the categories in section 30. For this reason, sections 30 and 31 are sometimes referred to as being mutually exclusive. Section 31 applies where complying with the request would prejudice or would be likely to prejudice various law enforcement purposes (listed in the Act) including preventing crime, administering justice, and collecting tax. It also protects certain other regulatory functions, for example those relating to health and safety and charity administration.

Section 33 – prejudice to audit functions

This exemption can only be used by bodies with audit functions. It applies where complying with the request would prejudice or would be likely to prejudice those functions.

Sections 35 – government policy & Section 36 – prejudice to the effective conduct of public affairs

These two sections form a mutually exclusive pair of exemptions. The section 35 exemption can only be claimed by government departments or by the Welsh Assembly Government. It is a class-based exemption, for information relating to:

- the formulation or development of government policy;
- communications between ministers;
- advice from the law officers; and
- the operation of any ministerial private office.

For policy-related information held by other public authorities, or other information that falls outside this exemption but needs to be withheld for similar reasons, the section 36 exemption applies.

The section 36 exemption applies only to information that falls outside the scope of section 35. It applies where complying with the request would prejudice or would be likely to prejudice “the effective conduct of public affairs”. This includes, but is not limited to, situations where disclosure would inhibit free and frank advice and discussion.

This exemption is broad and can be applied to a range of situations.

Examples

A council refused to disclose a list of schools facing financial difficulties, because this could damage the schools’ ability to recruit pupils, as well as making schools less likely to co-operate and share financial information freely with the council (ICO decision notice [FS50302293](#)).

A university refused to disclose a complete list of staff email addresses. On a previous occasion when email addresses had been disclosed, this led to a security attack, as well as an increase in spam, phishing, and emails directed inappropriately (ICO decision notice [FS50344341](#)).

Section 37: Communications with Her Majesty, the Royal Family or concerning honours

It covers any information relating to communications with the royal family and information on granting honours. This exemption is absolute in relation to communications with the monarch, the heir to the throne, and the second in line of succession to the throne, so the public interest test does not need to be applied in these cases. All other information under the scope of this exemption is qualified, so the public interest test must be applied.

Section 38: Endangering Health and Safety

You can apply the section 38 exemption if complying with the request would or would be likely to endanger anyone's physical or mental health or safety. In deciding whether you can apply this exemption, you should use the same test as you would for prejudice.

Section 39: Environmental Information

You should deal with any request that falls within the scope of the Environmental Information Regulations 2004 under those Regulations. This exemption confirms that, in practice, you do not also need to consider such requests under the Freedom of Information Act. Only public authorities that are covered by the Regulations can rely on this exemption.

Section 42: Legal Professional Privilege

This applies whenever complying with a request would reveal information that is subject to 'legal professional privilege' (LPP) or the equivalent Scottish rules. LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice or for ongoing or proposed legal action. These long-established rules exist to ensure people are confident they can be completely frank and candid with their legal adviser when obtaining legal advice, without fear of disclosure.

Section 43: Trade Secrets & Prejudice to Commercial Interests

This exemption covers two situations:

- when information constitutes a trade secret (such as the recipe for a branded product); or
- when complying with the request would prejudice or would be likely to prejudice someone's commercial interests.

Appendix 2 – Flow Chart (Responding to a Request)

For the ICO's recommended approach to dealing with FOI requests, see

https://ico.org.uk/media/for-organisations/documents/1167/flowchart_of_request_handling_under_foia.pdf

Appendix 3 – Freedom of Information - Appeals Procedure

The Act places a duty on public authorities such as WHMAT to put a process in place to ensure that applicants are able to appeal to the public authority for an internal review/appeal if they are not content with the decision on the release of information. This provides a first review stage for applicants.

Appeal requests should be submitted in writing to the Company Secretary within 5 working days of the requestor receiving their outcome letter.

Appeal Process

If WHMAT refuses to supply the information requested, or the applicant is dissatisfied with its response or feels that a fee has been applied unfairly they may ask for an internal review/appeal of that decision.

The following principles will apply when considering an appeal request:

- The review will be undertaken by an individual who was not involved in the original request for information
- If the applicant has not received a response to a request for information within 20 working days, it may be regarded that WHMAT has refused the request; the individual therefore has the right of appeal
- All reviews will make an assessment of the information released against the information requested and make a full review of the information associated with the original application
- The reviewer will discuss the decisions made with the staff members concerned with the original request in order to gain a full picture of how decisions were made
- The reviewer may contact the applicant at their own discretion
- The reviewer may obtain advice from external sources including legal advice
- Conclusion will be summarised and confirmed in writing to the applicant and copied to the Company Secretary who will log them centrally for future reference
- An internal review must be completed before an appeal can be made to the Information Commissioner.

Timescales

WHMAT will aim to deal with internal reviews/appeals within 20 working days of the receipt of the appeal. If it becomes clear at any stage of the appeal that the above timescales cannot be met, WHMAT will inform the applicant in writing and give a revised deadline for completion of the review.

Outcomes

An internal review may have three outcomes:

- The original decision is reversed
- The original decision is amended
- The original decision is upheld.

Whatever the outcome of the appeal, the complainant will be informed in writing with appropriate information about what will be provided should a decision be reversed or amended.

Applicants will be informed that, if they are not happy with the outcome of the internal review, they have the right to contact the Information Commissioner.