

# FE Sector Freedom of Information Procedures

Author/Responsibility	Document Version	Date of Review	Next Review Due
Michelle Breslin	2	September 2022	September 2024

## 1. Background

The Freedom of Information Act (2000) (FOIA) extends the public's rights of access to information held by public authorities, including Further and Higher Education institutions, and imposes a number of obligations on them. Members of the public have a statutory right (with minor limitations) to:

- a) Obtain (either from the Colleges website or in some other form) all the information covered by the Colleges Publication Scheme.
- b) Request (with minor limitations) any information held by the College, regardless of when it was created, by whom, or in the form in which it is now recorded.

The FOIA covers all recorded information, including drafts, recordings of telephone conversations, notes. It also includes datasets which are calculated and factual displays of information.

It also covers information which may be held by a third-party organisation on behalf of the College e.g. off site storage, third party contractors.

This Procedure complies with the College's Access to Information Policy and outlines the process the College will follow when dealing with requests for information under the FOIA.

This process will assist all staff in ensuring that all requests for information are processed in line with the legislation and establish best practice.

For clarity, further information is available in the [Section 45 Code of Practice](#) which has been published to assist Public authorities to meet their obligations.

## 2. Scope

The FOIA gives individuals and organisations the right to request information pertaining to the functions and responsibilities of the College. These requests will be granted where possible unless an exemption applies. If an exemption applies the individual will be notified as to the reasons why their request cannot be met.

1. In respect of an initial enquiry or receipt of an Information Request this procedure applies to all NWRC employees.
2. Requests for information under the Freedom of Information Act should be forwarded to the Compliance Officer.
3. Once the information request has been transferred to the Compliance Officer, the procedures scope is limited to the Compliance Officer or delegates.
4. The Freedom of Information Act contains exemptions to the right of access in order to protect legitimate interests and sensitivities. Some exemptions are absolute while others are subject to a public interest test and are known as 'qualified' exemptions.

### **3. How to Make a FOI Request**

Any individual/organisation can submit a request for information relating to College business activities. Section 8 of FOIA states the criteria for a valid request to be:

1. In writing
2. states the name of the individual and an address for correspondence, and
3. describes the information requested.

Requests can be sent to the Compliance Officer at:

**Compliance Officer**  
**NWRC**  
**78-80 Strand Road**  
**Derry~Londonderry**  
**BT48 7AL**  
[DPO@nwrc.ac.uk](mailto:DPO@nwrc.ac.uk)

### **4. Recognising FOI Requests**

A request may form either the main content of a communication or be 'peppered' throughout a less obvious piece of correspondence. They may also be transmitted by email. Both will be valid FOI requests.

For the purpose of responding to a request, it will be deemed as made in writing if the following apply:

1. is transmitted by electronic means
2. is received in legible form, and
3. is capable of being used for subsequent reference.

All requests must be processed on equal merit i.e. applicant and purpose blind. The College must not allow any opinion or prior history of a person to cloud the fact a request has been submitted. There are criteria if it is suspected that a request is vexatious (See Section 7).

### **5. Description of the information and clarification**

As noted above, a valid request must describe the information being sought.

The College accepts that individuals may not know exact names of documents or how information is collated however, if they have provided a description which enables identification of the information, the request will be valid.

If the scope of the request is unclear, the College can ask for clarification to enable a better understanding of what is being asked for and more focuses search. Clarity from the individual will be sought where a reasonable judgement requires more detail. Until such detail is received, the College is not obliged to comply. (FOIA, Section 1(3))

Section 16 of FOIA places obligation on the College to provide advice and assistance where clarity is required to respond. The College may provide help as to how the request can be reformulated to enable a more focussed interrogation of the information in question.

The time allowed for clarification to be sought shall not be included as part of the 20 working days response timeframe. The clock is paused until clarification is received.

## **6. Charges**

Section 12 of FOIA allows the College to refuse a request if the cost of compliance would exceed the appropriate limit of £450. Compliance factors can include:

- Complying in entirety, or
- Confirm/deny if information is held

The estimate must be reasonable at all times.

The limit of £450 is calculated at £25 per hour, regardless of the grade of staff member(s) who would be involved in the response. If the cost to determine the following 4 points exceeds £450, the Section 12 exemption is engaged.

- determining whether the information is held
- locating the information, or a document containing it
- retrieving the information, or a document containing it
- extracting the information from a document containing it.

Where the cost exemption has been exceeded, the College may exercise its duty to 'advise and assist' to help the individual reformulate their request so that the maximum limit is not reached.

## **7. Vexatious and Repeated Requests**

Section 14 of FOIA places no obligation on the College to respond to a request which is vexatious.

A request which is clearly vexatious may be where there is abusive, offensive language against staff. The College will be justified to refuse to respond to the request in these circumstances.

Some requests may have an undertone which is less obvious however the College can consider the criteria for vexatiousness if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Factors to assist with this assessment are:

- Burden placed on the College/staff
- Likely motives
- Value or purpose of the request
- Harassment/distress to staff

Where the College has previously complied with a request to an individual, it can refuse to further respond (unless an appropriate timeframe has elapsed and there may now be new information available).

A request can be considered repeated if it is 'identical or substantially similar'.

A Refusal Notice should be provided to notify of Section 14 being engaged. If a Refusal Notice has already been issued for reasons of vexatiousness, it will not be considered reasonable to re-issue this. (See Section 13)

## **8. Calculate Time**

The time allowed for complying with a request starts when your organisation receives it, not when it reaches the Compliance Officer or other relevant member of staff. It is critical that all requests are forwarded to the Compliance Officer as soon as they are received.

The FOIA states that all requests must be responded to promptly and no later than the 20<sup>th</sup> working day from receipt.

A working day is any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom ([List of Bank Holidays](#)). A 'working day' is considered to end at 23:59.

The College may extend the time to comply with the request by up to 20 working days but only where a Public Interest Test may require it. The information, exemptions and engagement should all be collated before the initial 20 day limit.

## **9. Record FOI Request**

The date the request is received must be recorded to evidence the timescale for response. The clock begins from the date of receipt by the College, not the Compliance Officer therefore it is imperative that confirmed or suspected FOI requests are forwarded to the Compliance Officer as soon as possible.

1. Input the request details on to the designated recording system.
2. Note the deadline for reply against the record.
3. Acknowledge receipt of request (The acknowledgement letter should be completed no later than 5 working days from receipt of the request).
4. All elements of each request must be recorded to support actions taken, decisions, communications and guidance referred to.

## **10. Locating the Information/ Identifying the Responsible Owner**

FOIA only applies to information which already exists. Public authorities are not obliged to create information in response to a request. They may be required to manipulate databases to extract information, but not to manipulate data to create new information.

If the information requested is available via the Colleges Publication Scheme, the Compliance Officer will make this available as a matter of routine business. The 20 days' timescale for response will still apply.

The Compliance Officer will identify where requested information may be held and refer to the appropriate Responsible Owner to collate. Please note, requests may have more than one Responsible Owner.

It may be appropriate to convene a meeting with the Responsible Owner to discuss the request and any concerns around the information being sought after. This allows the Compliance Officer opportunity to assess any exemptions which may apply.

To allow a proper assessment of the information, the Responsible Owner must conduct a thorough search of records within their remit to determine if the information is held.

If the information is not held by the College but by another 'Public Authority', the Compliance Officer should do one of the following options:

1. Notify the individual and explain that some/all of the information is held by another Authority
2. Suggest the applicant re-applies to that Authority and provide contact details for such.
3. Advise the individual of another authority where the information may be held.

Where the information is held by a third party contractor 'on behalf' of the College, the Compliance Officer/information owner will engage at the earliest opportunity to retrieve all relevant information.

## **11. Responding to a Request**

Once information has been collated and it has been agreed that which can be released, the College should consider if it can be published as a dataset. If this is practicable, the College must undertake to re-publish this data periodically. Section 1(1)(a) of FOIA requires a public authority to inform an individual whether it holds the information specified in the request, also known as the duty to 'confirm or deny'.

There may be occasions when complying with the duty to confirm or deny would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the Act allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.

An individual may indicate their preference for obtaining the information, namely:

1. Permanent form (e.g. copies)
2. Inspection
3. Summary form
4. Electronic and re-usable format

The College should comply where it is 'practically reasonable' to do so.

Encryption of the information is not necessary as disclosure under FOI is to the public arena.

## **12. Exemptions**

While the public has a Right to submit FOI requests and the presumption will always be to disclose, there may be occasions where the College is permitted to withhold information.

Where there are concerns about the disclosure of information to the public, the College can only withhold where the Public Interest in maintaining the exemption outweighs the Public Interest in disclosure. To be clear, 'Public Interest' does not relate to information which 'interests' the public, but what is 'in their interest'.

The FOIA has a list of exemptions which exist and allow the College to withhold information.

Exemptions will fall into one of 2 categories.

1. **Absolute:** If the exemption is engaged, no further assessment is necessary. Does not Require Public Interest Test (PIT).
2. **Qualified:** If the exemption is engaged, the College must conduct a PIT to balance the factors between the public interest in maintaining the exemption and the public interest in disclosure.

(Please refer to Appendix 1 for a full list of exemptions and their categories)

Where Section 36 is engaged, the application of this exemption is only valid with the opinion of the 'Qualified Person'. To confirm, the authorised 'Qualified Person' for the College is the Principal and Chief Executive or nominee.

The PIT may consider the following when considering a Qualified exemption.

**1. PIT (Disclose)**

- Accountability and transparency of decision making/expenditure
- Understanding of decisions which affect lives of the public and allow challenge
- Inform public of danger to health and safety
- Allow participation in debate of significance

**2. PIT (Withhold)**

- Exemption
- Prejudice or detrimental impact of disclosure
- Human rights e.g. Right to privacy
- Effect of disclosure on wider population e.g. personal data.

As mentioned above, the College may extend the timeframe for response to conduct the PIT.

### **13. Refusing a Request**

The College does have the right to refuse a request for information, but the reasons for withholding the information must be explained to the individual.

The College does have the right to refuse a request for information if:

1. The requests are vexatious or repeated ('identical or substantially similar' to a request from the same person that you have previously complied with, unless a reasonable amount of time has passed)
2. The cost of locating and retrieving the information exceeds the appropriate limit
3. The information is exempt from the duty to confirm or deny
4. The information is exempt from disclosure
5. It would not be in the public interest to confirm or deny that you hold the information
6. It would not be in the public interest to disclose the information

If the College does not hold the information requested and the individual is made aware of this, this is not refusing a request but giving a negative response. However, if the individual argues that the information is held, it could lead to a complaint to the Information Commissioner's Office.

When drafting a Refusal Notice, the following must be included:

1. The fact the information is exempt
2. Specifies which exemption is engaged
3. Why the exemption is engaged
4. Public Interest Test considerations
5. Details of how to request an internal review
6. Details of the ICO to appeal

#### **14. Appeal Process**

If an individual is not happy with how the College has handled their request or exemptions applied to the response, they have a right to ask for an internal review. Appeals should be submitted within **40 working days** of receipt of this response detailing reasons for dissatisfaction and should be addressed to:

**Compliance Officer**  
**NWRC**  
**78-80 Strand Road**  
**Derry~Londonderry**  
**BT48 7AL**  
[DPO@nwrc.ac.uk](mailto:DPO@nwrc.ac.uk)

The Compliance Officer will convene a panel of independent personnel who will then examine the initial request/response, the request for appeal and review if there are areas for improvement and whether or not the College can reconsider releasing information originally believed to be exempt.

The College will issue a response to all appeals within 20 working days from date of receipt.

If the individual is not happy with the Appeal Panel decision, they may contact the Information Commissioners Office at:

**ICO**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow, Cheshire**  
**SK9 5AF**



## Appendix 1

Section	Description	Absolute or Qualified	Public Interest Test	Class or Prejudice
21	Information already accessible (through another act or included in Publication Scheme)	Absolute		Class
22	Information intended for future publication (whether the date is determined or not)	Qualified	✓	Class
22a	Research Data	Qualified		Prejudice
23	Information supplied by, or relating to, bodies dealing with security matters (named)	Absolute		Class
24	National Security	Qualified	✓	Prejudice
25	Certificates under S23 and 24	Qualified	✓	Prejudice
26	Defence	Qualified	✓	Prejudice
27	International Relations	Qualified	✓	Prejudice
28	Relations within the UK (between the UK government, the Scottish Administration, the National Assembly for Wales and the Executive Committee of the Northern Ireland Assembly)	Qualified	✓	Prejudice
29	The Economy	Qualified	✓	Prejudice
30	Investigations and Proceedings	Qualified	✓	Class
31	Law Enforcement	Qualified	✓	Prejudice
32	Court Records etc.	Absolute		Class
33	Audit Functions	Qualified	✓	Prejudice
34	Parliamentary Privilege	Absolute		Prejudice
35	Formulation of Government Policy	Qualified	✓	Class
36	Effective Conduct of Public Affairs	Qualified	✓	Prejudice
37	Royal Household Communications and Honours	Qualified	✓	Class
38	Health and Safety	Qualified	✓	Prejudice
39	Environmental Information	Qualified	✓	Class
40(1)	Personal Information (of applicant)	Absolute		Class
40(2)	Personal Information (third party)	Absolute		Prejudice
41	Provided in Confidence	Absolute		Prejudice
42	Legal Professional Privilege	Qualified	✓	Class
43	Commercial Interests	Qualified	✓	Prejudice
44	Prohibition on Disclosure	Absolute		Class