



## FREEDOM OF INFORMATION ACT 2000 POLICY

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### 1 INTRODUCTION

- 1.1 The main provisions of the Freedom of Information Act 2000 came into force on the 1<sup>st</sup> January 2005. From that date, any person can make a request under the Act to East Surrey College for information.
- 1.2 As a general rule, upon receiving a valid request under the Freedom of Information Act 2000, the College will have 20 days in which to retrieve and prepare the information for disclosure to the applicant unless the information requested falls within one of the exemptions under the Act.
- 1.3 The purpose of this policy is to help the College comply with its obligations under the Freedom of Information Act 2000 (the "Act") and to ensure that decisions made under the Act have regard to the overall principle of the legislation, namely the need for openness and accountability.
- 1.4 This policy has been prepared having regard to the relevant Code of Practice and the guidance published by the Information Commissioner.
- 1.5 This Policy is designed to make sure that all requests for information are treated fairly and consistently whilst recognising that decisions on exemptions are a matter for professional judgment and discretion may have to be exercised.
- 1.6 This policy deals with 5 main issues:
  - Charging regime
  - Exemptions and applying the Public Interest Test
  - Decision making
  - Consultation with third parties
  - Complaints procedure

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### **2 CHARGING REGIME**

**2.1** The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 govern the fees that the College can charge for responding to requests under the Act and are available at [www.foi.gov.uk](http://www.foi.gov.uk).

The College will not charge for information requested under the Act unless the disbursements incurred exceed £5. Photocopying will be charged at 3p per A4 sheet but no charge will be made for the first 175 sheets provided.

**2.2** If an individual requests information that is held by the College in a form that is inaccessible to them because of a disability, the College will provide the information in a different format free of charge.

**2.3** The College will not comply with a request for information under the Act where the cost of finding out whether it holds the information; locating it; retrieving it and extracting the information exceeds £450 for one individual request. Where more than one request on the same or related subject is received from one individual or from a number of people who appear to be attempting to ensure that the costs will not exceed the £450 limit then the College will not comply with it. The limit of £450 represents 18 hours of officer time.

### **3 EXEMPTIONS AND APPLYING THE PUBLIC INTEREST TEST**

**3.1** Upon receiving a valid request for information under the Act, the College will need to decide whether the information is subject to an exemption and, if so, whether the exemption is absolute or qualified.

#### **3.2 Absolute Exemptions**

**3.3** If the information is subject to one of the absolute exemptions under the Act, the College is not obliged to disclose it or, in certain circumstances, tell the person requesting it whether or not the information is even held by the College.

**3.4** The following absolute exemptions will apply to requests received by the College:

- Information otherwise accessible
- Court records
- Personal information
- Information provided in confidence
- Information whose disclosure would be prohibited by law or where it would be incompatible with any European Community obligation

**3.5** If the information requested forms part of a court record; is provided in confidence or its disclosure is prohibited by law (or incompatible with any European Community obligation), the College will rely on the appropriate absolute exemption and a refusal notice will be issued. If the request is for personal information about the applicant, the request will be processed as a request made under the Data Protection Act 1998.

#### **3.6 Information otherwise accessible**

**3.7** This will include information available via the College's Publication Scheme and information that the public have access to under local government legislation.

**3.8** If the information is reasonably accessible to the applicant, the request will be refused and the applicant will be told how to access it.

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**3.9** If the individual's circumstances such as their location or ability to travel; financial means to access the information (including where the information requested forms part of a much larger document for which a fee is payable); difficulty in understanding English or any disability means that the information is not reasonably accessible to them, the request will be processed in accordance with the College's charging policy and, therefore, no charge will be made.

### **3.10 Personal information about a third party**

**3.11** Where a request relates to personal data about someone else (third party data), the College will rely on the absolute exemption under the Act if disclosure would breach any of the Data Protection principles.

**3.12** Information relating to Governors acting in an official capacity or officers acting in a work capacity will be disclosed unless there is a risk to the individual concerned. Therefore, information consisting of the names of officers; their work telephone number; email address; grade and pay; job description; details of any gifts received; expenses incurred and decisions made in their official capacity will be disclosed unless to do so could put the officer at risk.

**3.13** Information relating to Governors and Officers personal lives will not be disclosed. For officers, this will include home addresses, internal disciplinary matters and those classed as being of a private contractual nature between employee and employer such as actual salary.

### **3.14 Qualified Exemptions**

**3.15** If the information requested is subject to one of the qualified exemptions, the College will then be required to apply the public interest test; in other words decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing it or confirming whether or not the College holds the information.

**3.16** The following qualified exemptions will apply to information held by the College:

- Information intended for future publication (includes draft reports and minutes)
- Interests of the local economy
- Investigations and proceedings
- Law enforcement (includes preventing and detecting crime; administration of justice; assessment/collection of tax or exercise by the College of any other function of a public nature depending on its purpose)
- Health and Safety (where disclosure of the information requested would be likely to endanger the safety or physical or mental health of any individual)
- Legal professional privilege
- Commercial interests (includes information that is classed as a trade secret and where disclosure of the requested information would be likely to prejudice the commercial interests of any person)

### **3.17 Public Interest Test**

**3.18** The authority will have to decide whether, in any particular case, it serves the interests of the public better to withhold or disclose the information i.e. distinguishing between things that are in the public interest from things that merely interest the public.

**3.19** The competing interests that will be considered are the public interest favouring disclosure against the public (rather than private) interest favouring the withholding of information.

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**3.20** The identity and motive of the applicant seeking the information may be relevant when applying the test.

**3.21** The following paragraph lists some of the factors that will be considered by the College, both for and against disclosure, but are not exhaustive. The factors that apply will depend on the nature of the information requested under the Act.

**3.22** **Public interest factors that favour disclosure:**

- Openness in the College
- More informed debate of the issues under consideration by the College
- Promotion of accountability and transparency by the College for decisions taken by them where obligations on officers and members to provide reasoned explanations for their decisions leads to improved decision making and administration of the College
- Promotion of accountability and transparency in the spending of public money if disclosure ensures greater competition and better value for money for the public.
- Reassuring the public about the personal probity of members and officers
- Allowing individuals and companies to understand decisions made by the College
- Bringing to light information affecting public health and public safety particularly if it will contribute to the prevention of accidents or increase public confidence in the College
- Where the information is subject to legal professional privilege, disclosure may be in the public interest if it has served its purpose
- If disclosure would increase the number of companies willing to enter into commercial contracts with the College

**Public interest factors against disclosure**

- If disclosure would undermine or prejudice the investigation, prosecution or prevention of crime
- Where disclosure would undermine the bringing of civil or criminal proceedings by the College
- Protection of witnesses
- Maintaining the independence of the investigation process
- Where disclosure could prejudice the rights of the College or any third party to obtain access to justice
- If disclosure might lead to a reduction in the number of companies willing to negotiate with the College particularly in relation to high value contracts
- If disclosure might impact on the health and safety of staff
- If disclosure might encourage collusive tendering by companies

**3.23** **Dealing with Exemptions**

**3.24** A document containing information requested under the Act may well be caught by more than one exemption. For example, an internal inquiry carried out as a result of an accident or complaint may conclude that an individual officer should be the subject of internal disciplinary proceedings. To disclose information relating to internal disciplinary proceedings faced by an officer would breach one of the Data Protection principles and would therefore be subject to an absolute exemption. The remaining information contained in the report is likely to be caught by the "Law Enforcement" exemption and the public interest test would need to be applied before the edited report could be disclosed.

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- 3.25** Legal advice should be taken where there is any doubt about whether or not an exemption should be applied to the information requested.

### **4 DECIDING HOW TO RESPOND TO A REQUEST**

- 4.1** When a request for information under the Act is received, it will be referred to the relevant Freedom of Information Liaison Officer for that service. If that officer considers that one of the following exemptions may apply, they will refer the matter to their Vice Principal:

- Court records
- Personal information about a third party
- Information provided in confidence
- Disclosure prohibited by or under any enactment or be incompatible with European Community obligations
- Information intended for future publication
- Interests of the local economy
- Investigations and proceedings
- Law enforcement
- Health and safety
- Legal professional privilege
- Trade secret or prejudice to commercial interests

- 4.2** The Vice Principal will decide, in consultation with Legal Advisors, whether the exemption applies and, if a qualified exemption applies, will consider the public interest test before deciding whether the information should be disclosed to the applicant.

- 4.3** If the request is for third party data, the Data Protection Officer will be consulted for a view as to whether he/she considers that disclosure would breach one of the data protection principles.

### **5 CONSULTATION WITH THIRD PARTIES**

- 5.1** The Act applies to information "held" by the College so covers information owned or created by the College and also to information supplied to the College by contractors or other third parties. In addition, the rights under the Act are retrospective.

- 5.2** Although there is no statutory requirement to consult with third parties prior to disclosure being made, it will be appropriate in certain circumstances.

- 5.3** It will often be difficult for East Surrey College to make a definitive assessment as to how the release of particular information would prejudice a contractor's commercial interests or may release a trade secret. Information that the College considers may be prejudicial to commercial interests may not be considered to be so by a contractor (they may know that the information is already widely known by their competitors). Likewise, the contractor may often see the harm in the release of information that College officers do not appreciate.

- 5.4** There will be no need to consult on low value contracts where the information is very unlikely to be confidential or commercially sensitive.

- 5.5** The College will consult in the following circumstances:

- If there is any doubt as to whether a breach of confidence is likely to be actionable, the contractor should be asked for their view on disclosure. If consent

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is withheld and the College advised that an action for breach of confidence would be started, this is indicative (but cannot be conclusive) that the exemption may apply.

- Where the contract has a confidentiality clause and where East Surrey College considers that release of the information could potentially breach that clause.
- Where the College considers that the information may be commercially sensitive or a possible trade secret.

**5.6** The College will not seek the views of third parties when applying the public interest test, as they are likely to have a private interest in maintaining the exemption.

## **6 COMPLAINTS PROCEDURE**

**6.1** If someone considers that their request for information has not been properly handled or is dissatisfied with the decision made by the College about their request, their complaint will be dealt with by a more senior officer depending on the level of officer making the initial decision. Complaints will be dealt with within 21 days.

## **7 DATA PROTECTION OFFICER**

David Johnson  
East Surrey College  
Gatton Point  
London Road  
Redhill  
Surrey  
RH1 2JX  
Main Switchboard: 01737 772611

## **8. References**

Freedom of Information Act 2000

## **9. Further information**

None

**10. Produced/ Reviewed by:** Vice Principal, Finance and Resources **Date:** 20 November 2013

**11. Approved by:** Directorate **Date:** 22 November 2013

**12. Approved by:** Finance and Resources Committee **Date:** 28 November 2013

**13. Review by:** October 2015

**14. Policy Code:** ESC15 (a)