



# **Transform Trust Freedom of Information Policy and Publication Scheme May 2018**

## Introduction

Transform Trust, and its member Schools ("the Trust"), are committed to transparency in its dealings with the public and welcomes the aims of the Freedom of Information Act 2000 and the access provisions of the Data Protection Act 1998, General Data Protection Regulations (GDPR) 2017 and Data Protection Act 2018. The Trust will make every effort to meet its obligations under the legislation and will regularly review procedures to check that it is doing so.

The starting point for this policy is that the public have a right to access recorded information held by the Trust and that we will seek to promote open access to information, subject to exemptions contained within the relevant legislation.

## Background

The Freedom of Information Act 2000 (FoIA) applies to all public authorities and came fully into force on 1<sup>st</sup> January 2005. The Act specifically identifies schools as public authorities (Part IV of Sch 1 of FoIA). It provides the public with a statutory right of access to recorded information held by authorities (subject to certain exemptions) within 20 working days. The Act applies to all information that falls within the scope of the Act (not just that created from 1<sup>st</sup> January 2005) and is fully retrospective. Section 19 of the Act also obliges the Trust to make information available through an approved "publication scheme".

In addition, individuals currently have a statutory right of access to their own "personal data" under the Data Protection Act 1998 (DPA). The DPA and FoIA work together to effectively exempt personal information from disclosure under FoIA. Changes in the definition of what constitutes personal data means these legal arrangements will be further amended by the GDPR 2017 and the Data Protection Act 2018 when they come into force after 25 May 2018.

As the full implications of the legislation becomes clearer, the Trust will amend this policy to reflect relevant changes.

The EIR (Environmental Information Regulations 2004) provides a statutory right of access to "environmental information", as defined in these regulations. The EIR came into force on 1<sup>st</sup> January 2005 and replaces the existing 1992 Regulations. The EIR are also fully retrospective.

The Information Commissioner Office (ICO) regulates and enforces these three statutory/legal information access regimes.

Each regime contains categories of exempt information, where information can be withheld. An applicant who is member of the public can refer any decision to withhold information under an exemption to the ICO, who can overturn a decision to withhold information. For the purposes of this policy, the “public” is defined as any individual or organisation anywhere in the world and an “information request” refers to any request for recorded information made under the FOIA, EIR or DPA.

### Timescales

Freedom of Information (and EIR) requests should be dealt with within 20 working days, excluding school holidays.

Requests for Data Protection (personal information requests) should be dealt with within 30 calendar days, once the GDPR/DPA 2018 is fully implemented within English law.

Requests for access to pupil education records under Education (Pupil Information) (England) Regulations 2000 should be dealt with within 15 school working days.

### Delegated responsibilities

Overall responsibility for ensuring that the Trust meets the statutory requirements of the FOIA, EIR and DPA rests with the Board of Trustees for the Trust, and the Local Governing Body of the schools. The Chair of Board (for the Trust) and Chairs of Governors (for Schools) have overall responsibility for information management issues. They have delegated the day-to-day responsibility of implementation to the Chief Executive Officer (CEO) for the Trust and Headteachers for the schools.

The CEO will be assisted by the Data Protection Officer and/or the Chief Finance Officer and the Headteachers (Data Controllers for schools) are assisted by the Data Processor for their school who currently has responsibility for ‘access to information’. All Trust staff are responsible for ensuring that they handle requests for information in compliance with the provisions of the various Acts, taking advice from the Headteachers and DPO where necessary.

### Scope

This policy applies to all recorded information held by the Trust that relates to its business and the business of the schools. This includes:

- Information created and held by the Trust or School;
- Information created by the Trust or School and held by another organisation on our behalf;

- Information held by the Trust or School provided by third parties, where this relates to a function or business of the Trust/School (such as contractual information); and
- Information held by the Trust relating to Governors where the information relates to the functions or business of a school

As a general rule, this policy does not cover personal written communications (such as personal e-mails sent by staff). The Trust's Data Protection Policy establishes the standards regarding the use of "personal data" (as defined in the Data Protection Act 1998, GDPR 2017 and Data Protection Act 2018).

## Requesting information

### Procedures

The practical process for handling information enquiries in line with the relevant legislation will be produced and copies can be obtained from the Trust's DPO or the Schools Data Controller or Data Processor.

The Trust has a duty under both the FoIA and EIR to provide advice and assistance to applicants making information requests. This includes assisting the applicant in making the application for information. Although no such duty exists under the DPA, the same level of care will be provided.

### Charges

The three information regimes contain different provisions that permit charges to be made for responding to information requests. The Trust and/or Governing Body may charge a fee for complying with requests, as calculated in accordance with FoIA regulations. If a charge is to be made, the Trust or School will give written notice to the applicant before supplying the information requested.

The Trust or School will only charge for the cost of copying and transmitting information, not for time taken in reaching decisions regarding whether information is covered by an exemption.

Where the Trust or School estimates that the cost of locating the information will exceed the statutory threshold of £450 or around 18 hours work, it will consider whether to comply with the request. The Trust or School is not obliged to comply with such a request but may choose to do so.

Under GDPR 2017 and DPA 2018 there will be no charge for responding to requests for personal data.

Under the access to educational records, there is a sliding scale of up to £50 for copies of educational information.

## Publication

Section 19 of the FoIA obliges the Trust to make information pro-actively available in the form of a “publication scheme”. This scheme will list categories, or “classes” of information that will routinely be made available without the need for a specific information request. The Trust will indicate in the scheme where it wishes to charge for providing categories of information. The scheme will be published on the Trust’s website.

The Trust plans to review this scheme regularly. Whenever any information is provided in response to a recorded FoIA enquiry, the Trust will assess whether the information is suitable for wider publication.

## Withholding Information

The Freedom of Information Act contains 23 exemptions allowing the withholding of information. There are two categories: absolute and non-absolute. The Trust will only withhold information if it falls within the scope of one or more of these exemptions.

Where an absolute exemption applies, the Trust can automatically withhold the information. However, where the exemption is non-absolute the information can only be withheld where the Trust decides that the public interest is best served by withholding the information. Certain exemptions also contain a “prejudice test”, which means that the exemption can only be claimed if disclosing the information would prejudice the interest protected by the exemption.

The Trust will only apply an exemption where it has reason to believe that prejudice might occur to the interest protected by the exemption. In addition, wherever a “public interest” exemption is being considered, the Trust will only withhold that information which it can demonstrate that the public interest will be best served by withholding. When considering withholding information under a non-absolute exemption the Trust will consider whether the release of the information would:

- promote further understanding of current issues of public debate;
- promote the accountability of decisions taken by the Trust and the spending and allocation of public money;
- bring to light matters of public safety;
- allows the public to understand and challenge decisions made by the Trust;

- be otherwise in the public interest.

Where information is withheld under an exemption, in most cases the reason behind the decision will be made clear to the applicant, citing the exemption under which the information is being withheld. The applicant will also be given details of the right to challenge the decision through the Trust's Local Governing Body or the Trust Board and the right of appeal to the Information Commissioner's Office.

Where a staff member plans to apply an exemption, s/he may consider whether other schools hold similar information. If this is likely, s/he may contact the relevant school(s) to discuss the substance of request and ensure that a consistent response is provided to the applicant.

The Trust will also refuse to supply information under the FoIA where the request is considered "vexatious" or "repeated" and under the EIR, where the request is considered 'manifestly unreasonable'.

### **Releasing a third party's information**

Where, in response to a request, information relating to a third party (either an individual or other organisation) has to be considered for release, the staff member that received the request will seek input from the Data Controller or Data Protection Officer responsible for access to information requests prior to the release of the information.

The release of third party information will be considered carefully to prevent actions for breach of confidence or, in the case of living individuals, breaches of the DPA. Both the EIR and FoIA permit information to be withheld when its release would breach the provisions of the DPA.

When the requested information relates to a living individual and amounts to "personal data" as defined in the DPA, its disclosure could breach the DPA. Therefore, the release of third party personal information relating to living individuals will be considered in accordance with the data protection principles and, in particular, the "third party" provisions of the data protection regulations.

Where appropriate, the Trust will contact the individual to ask for permission to disclose the information. If consent is not obtained, either because it was not considered appropriate to approach the third party or the third party could not be contacted or consent is refused, the Trust will then consider if it is reasonable to disclose the information, taking into account:

- any duty of confidentiality owed to the third party;
- the steps taken to seek consent;
- whether the third party is able to give consent;
- any express refusal of consent; and
- whether the information is already in the public domain

The decision to disclose third party information will also take into account the impact of disclosure on the third party, relative to the impact on the applicant of withholding the information. Where the third party has been acting in an official, rather than private capacity, the Trust will be minded to disclose the information, although decisions will be made on a case-by-case basis.

Where the information relates to a staff member, the provisions of the DPA will still apply in many circumstances but the nature of the information will influence the Trust's decision whether to release the information. Where the information relates to a matter clearly private to the individual, e.g. a disciplinary hearing, the information is likely to be withheld. However, where the information relates to the member of staff acting in their official capacity, e.g. an expenses claim, the information will normally be released. The exemption relating to the release of a third party's personal data will not be used to withhold information about administrative decisions taken by the Trust.

As the DPA only relates to living individuals, the exemption relating to Data Protection under both the EIR and FoIA will not apply to information held about a deceased person. Where a request might be controversial, the staff member will seek input from the Data Processor who will take advice from the Headteacher (Data Controller) or Data Protection Officer (Trust) where necessary.

Where the third party is an organisation, rather than an individual, the data protection provisions will not apply. The Trust will consider consulting the third party concerning the release of their information where:

- the views of the third party may assist the Trust to decide whether an exemption under the Act applies to the information; and
- in the event of the public interest test being applied, where the views of the third party may assist the Trust to decide on where the public interest lies.

Consultation will not be undertaken where:

- the Trust will not be disclosing the information due to some valid reason under the Act
- the Trust is satisfied that no exemption applies to the information and therefore cannot be withheld and
- the views of the third party will have no effect on the decision, e.g. where there is other legislation preventing disclosure.

Where input from a third party is required, the response time for the request remains the same. Therefore, it will be made clear to the third party at the outset that they have a limited time for their views to be provided and that where responses are not immediate, the decision to disclose may have to be made without their input for the Trust to comply with the statutory time limits in the legislation.

The Trust will endeavour to inform individuals and organisations submitting information that the information might be released following an information request and, where appropriate, will provide the supplier of the information an opportunity to request confidentiality or supply reasons as to why the information should be treated confidentially. Ultimately however, whatever a third party's view it is the Trust's decision whether to disclose the information.

### **Information held within contracts with the school**

Any contractual information, or information obtained from organisations during the tendering process, held by the Trust or its Schools are subject to the provisions of the FoIA and EIR. Whenever the Trust enters into contracts, it will seek to exclude contractual terms forbidding the disclosure of information beyond the restrictions contained in the legislation. A standard form of wording will be included in contracts to cover the impact of FoIA and EIR in relation to the provision of information held in contracts.

The Trust can withhold contractual information where its disclosure under either the FoIA or EIR could be treated as actionable breach of confidence. Where the Trust intends to include non-disclosure provisions in a contract, it will agree with the contractor a schedule of the contract that clearly states which information should not be disclosed.

The Trust will only agree to enter confidentiality clauses where the information is confidential in nature and that it is confident that the decision to restrict access to the information is a reasonable one. The Trust may choose to seek external advice in making this judgement. Where information is not covered by the exemption relating to information accepted in confidence, a further exemption specifically under FoIA may be relevant, relating to commercial interests. This



exemption is subject to a “public interest” test. Whenever the Trust must consider the release of such information, it will contact the relevant organisation to obtain its opinions on the release of the information and any exemptions they may think relevant. However, the Trust will make the final decision relating to the disclosure of the information.

The Trust can also withhold information contained in contracts where any of the other exemptions listed in the FoIA or EIR are appropriate, although information will only be withheld in line with the Trust’s policy on the use of exemptions. All future contracts should contain a clause obliging contractors to co-operate fully and in a timely manner where assistance is requested in responding to an FoIA or EIR request.

### **Complaints Procedure**

Whenever the Trust or School withholds information under an exemption, or does not produce it for any other reason (e.g. it is not held), it will inform the applicant of their right to complain about the decision through the School or Trust’s complaints procedure and of the right of appeal to the Information Commissioner. Any complaint received will be dealt with in accordance with the School/Trust’s complaints procedure as detailed in its Complaints Policy. If the result of the complaints is that any decision to withhold information be overturned, the information will be supplied as soon as it is possible.

### **Requests made under the Data Protection Act and Education Regulations 2000**

The DPA1998, GDPR 2017 and DPA 2018 entitle an individual to his or her ‘personal data’, as defined in the legislation, where the information is held on an automated system, such as a computer and manual files, where they amount to what is described as an “accessible record” or in a structured filing system, defined in the regulations as a “relevant filing system”.

The parental right to receive information pertaining to the “educational record” of their child should continue to be administered under the Education (Pupil Information) (England) Regulations 2000.

Whenever a request for personal data is received and is not covered by the regulations above, the request will be administered in accordance with the relevant section of the Trust’s FoIA operating processes.

Whenever a request is made under the data protection provisions for personal data, the Trust will provide the applicant with the relevant information contained within files relating to that individual that is accessible under both the DPA and FoIA, subject to any exemptions.

Where it is not possible to remove third party information without rendering the response meaningless to the individual, the provision of third party information will be considered in line with section 8 of this policy regarding the disclosure of third party information.

Data protection regulations contain different types of exemption and therefore, whenever a member of staff is considering applying an exemption, he/she will seek the opinion of the Data Controller or the Data Protection Officer responsible for access to information requests.

### **Illegal actions**

It is a criminal offence under any of the three information regimes for members of staff to alter, deface or remove any record (including e-mails) following receipt of an information request. Both the FoIA and EIR contain specific provisions to make such action a criminal offence.

### **Monitoring and Review of the Policy**

This Policy may be amended at any time to take account of changes in legislation. The normal cycle of review for this policy will be 2 years.

## FREEDOM OF INFORMATION – PUBLICATION SCHEME

### Classes of Information

**Class 1 - who we are and what we do** - organisational information, locations and contacts, constitutional and legal governance.

Who we are and what we do	How the information can be obtained	Cost
Members of the Trust Board and their appointments	Trust website	No charge
Instrument of Government	Department for Education (DfE) website – <a href="http://www.dfe.gov.uk">www.dfe.gov.uk</a>	No charge
Contact details for the Trust	Trust website	No charge
Corporate details: registered office, members, directors	Companies House website – <a href="http://www.companieshouse.gov.uk">www.companieshouse.gov.uk</a>	Company House charges
Academies in the Trust – profiles	Individual Academy websites	No charge
Contact details for Academies	Trust website	No charge
Trust staffing structure	Hard copy	Schedule of charges

**Class 2 - what we spend and how we spend it** - financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.

What we spend and how we spend it	How the information can be obtained	Cost
Statutory accounts	Trust website – published annually	No charge
Procurement – policy and opportunities	Trust website (Finance Handbook)	No charge
Pay policy	Hard copy	Schedule of charges
Directors and Governors' allowances	Hard copy	Schedule of charges

**Class 3 - what our priorities are and how we are doing** - strategy and performance information, plans, assessments, inspections and reviews.

What our priorities are and how we are doing	How the information can be obtained	Cost
Trust aims and values	Trust website	No charge
Individual school performance – attainment and achievements	Academy websites	No charge
SATs results	Academy websites	No charge
Latest Ofsted reports	Trust website Academy websites	No charge
Latest news and newsletters	Trust website Academy websites	No charge

**Class 4 - how we make decisions** - policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.

How we make decisions	How the information can be obtained	Cost
Scheme of delegation	Trust website Academy websites	No charge
Agendas of meetings of the Trust Board and its Committees	Hard copy	Schedule of charges
Minutes of meetings of the Trust Board and its Committees – this will exclude information that is properly regarded as confidential, personal or special category data	Hard copy	Schedule of charges
SATs results	Academy websites	No charge
Latest Ofsted reports	Trust website Academy websites	No charge
Latest news and newsletters	Trust website Academy websites	No charge
Admissions policy and procedures	Academy websites	No charge

**Class 5 - our policies and procedures** - current written protocols for delivering our functions and responsibilities.

Our policies and procedures	How the information can be obtained	Cost
Safeguarding policies and procedures	Academy websites and hard copy	No charge
Health and Safety policy	Academy websites and hard copy	No charge
Complaints procedure	Academy websites and hard copy	No charge
Equality and diversity policies	Academy websites and hard copy	No charge
Charging and remissions policy	Academy websites and hard copy	No charge
Data Protection Policy	Trust website	No charge
Pupil and curriculum policies including: <ul style="list-style-type: none"> <li>• Attendance</li> <li>• Behaviour and Discipline</li> <li>• Collective worship</li> <li>• Curriculum</li> <li>• Sex and Relationships policy</li> <li>• Special Educational Needs and Disability (SEND) and Information Report</li> </ul>	Trust website Academy websites and hard copy	No charge

**Class 6 - lists and registers** - information held in registers required by law and other lists and registers relating to the functions of the Trust.

Lists and registers	How the information can be obtained	Cost
Trust Members and Board - register of pecuniary and business interests	Trust website	No charge
Academy register of pecuniary and business interests	Trust and Academy websites	No charge
Any other lists and registers that the Trust is required to keep	Hard copy	Schedule of charges
Attendance at Trust Board and Governing Body meetings	Trust websites	No charge

**Class 7 - the services we offer** - advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The services we offer	How the information can be obtained	Cost
Prospectuses	Academy websites and hard copy	No charge
Out of hours clubs	Academy websites and hard copy	No charge
Extra-curricular activities	Academy website and hard copy	No charge
Lettings opportunities	Academies - hard copy	No charge

The classes of information will not generally include:

- Information - the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, Data Protection Act 1998, General Data Protection Regulations 2018, Data Protection Act 2018, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, permanently deleted, or is difficult to access for similar reasons.

#### **The method by which information published under this Scheme will be made available**

Where it is within our capability, information will be provided on our website. Where it is impracticable to make information available on a website or when an individual does not wish to access the information by the website, we will indicate how information can be obtained by other means and provide it by those means.

In exceptional circumstances some information may be available only by viewing in person. Where this manner is specified, contact details will be provided. An appointment to view the information will be arranged within a reasonable timescale.

Information will be provided in the language in which it is held or in such other language that is legally required. Where the Trust is legally required to translate any information, it will do so.

Obligations under disability and discrimination legislation and any other legislation to provide information in other forms and formats will be adhered to when providing information in accordance with this scheme.

#### **Charges may be made for information published under this scheme**

The purpose of this scheme is to make the maximum amount of information readily available at minimum inconvenience and cost to the public. Charges made by the Trust for routinely published material will be justified and transparent and kept to a minimum.

Material which is published and accessed on a website will be provided free of charge.

Charges may be made for information subject to a charging regime specified by Parliament.

Charges may be made for actual disbursements incurred such as:

- photocopying
- postage and packaging
- the costs directly incurred as a result of viewing information

Charges may also be made for information provided under this scheme where they are legally authorised, they are in all the circumstances, including the general principles of the right of access to information held by public authorities, justified and are in accordance with a published schedule or schedules of fees which is readily available to the public.

Charges may also be made for making datasets (or parts of datasets) that are relevant copyright works available for re-use. These charges will be in accordance with the terms of the Re-use of Public Sector Information Regulations 2015, where they apply, or with regulations made under section 11B of the Freedom of Information Act or with other statutory powers of the Trust.

If a charge is to be made, confirmation of the payment due will be given before the information is provided. Payment may be requested prior to provision of the information.

### Schedule of Charges

Type of charge	Cost	Basis of charge
Photocopying	5p per page black and white A4 10p per page colour A4 20p per page A3	
Postage and delivery	Actual cost of 2 <sup>nd</sup> class mail	
Statutory fees	Actual statutory fees	Admin time charge at £25.00 per hour

## Written Requests

Information held by the Trust that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act.

Email: [FOI@transformtrust.com](mailto:FOI@transformtrust.com)

Websites: [www.transformtrust.co.uk](http://www.transformtrust.co.uk)

Address: Unit 11, Castlebridge Office Village, Kirtley Drive, Nottingham, NG7 1LD

To help us process your request quickly, please clearly make any correspondence: ***“FOI Publication Scheme Request”***

## Feedback and Complaints

We welcome any comments or suggestions you may have about the scheme. If you want to make any comments about this publication scheme or if you require further assistance or wish to make a complaint then initially this should be address to the Company Secretary, Transform Trust (address and email given above).

If you are not satisfied with the assistance that you get or if we have not been able to resolve your complaint and you feel a formal complaint needs to be made then this should be address to the Information Commissioner’s Office. This is the organisation that ensure compliance with the Freedom of Information Act 2000 and that deals with formal complaints. They can be contacted at:

Information Commissioner’s Office (ICO), Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Enquiry Information Line: 01625 545700

Email: [publications@ic-foi.demon.co.uk](mailto:publications@ic-foi.demon.co.uk)

Website: [www.ico.gov.uk](http://www.ico.gov.uk)