



KING EDWARD VI
SHELDON HEATH ACADEMY

Freedom of Information Policy

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.

We will not withhold information in response to a valid request unless one of the following applies:

- An exemption to disclose, or
- The information sought is not held, or
- The request is considered vexatious or repeated, or
- The cost of compliance exceeds the threshold (see Appendix 4)

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 Academy, and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known as the Academy's "duty to confirm or deny" that it holds the information. However, the Academy does not have to confirm or deny if:

- The exemption is an absolute exemption or
- In the case of qualified exemptions, 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 specialised in their application, such as national security, and will not normally be relevant to the Academy. There are more than 20 exemptions but the Academy 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 test, 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 at the time of writing. Even where an absolute exemption applies:

- It does not mean that we 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.

The absolute exemptions in the Act are set out below. Those which might be relevant to the Academy are marked with an *:

- a. 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 the alternative route. This exemption includes cases where you are required to give information under other legislation, or where the information is available under via the Publication Scheme.
- b. Information dealing with security matters (section 23) – This applies to information directly or indirectly supplied by, or relating to, bodies dealing with security matters such as MI5, MI6, Special Forces, etc.
- c. Court records (section 32) – This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.
- d. Parliamentary Privilege (section 34) – This exempts information if it is required for the purpose of avoiding an infringement of Parliamentary privilege.
- e. Prejudice to the effective conduct of public affairs (section 36) – This relates to the maintenance of the collective responsibility of Ministers.
- f. Personal information* (section 40) – Where the enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act.
- g. Information provided in confidence* (section 41) – This relates to information obtained from a person where if its disclosure would constitute a breach of confidence actionable by that, or another, person.
- h. 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 the information. Guidance on carrying out the public interest test is in Appendix 3.

The qualified exemptions in the Act are set out below. Those which might be relevant to the Academy are marked with an *:

- a. 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 publication date. This could apply to statistics published at set intervals, statutory accounts, and similar information.
- b. National security (section 24) – Information is exempt for the purposes of safeguarding national security.
- c. Defence (section 26) – Information is exempt if its disclosure would prejudice the defence of the UK.
- d. International relations (section 27) – Information is exempt if its disclosure would, or would be likely to, prejudice relations between the UK and any other state.
- e. Relations within the UK (section 28) - Information is exempt if its disclosure would, or would be likely to, prejudice relations between any administration in the UK.
- f. The economy (section 29) – Information is exempt if its disclosure would, or would be likely to, prejudice the economic or financial interests of the UK.
- g. Investigations and proceedings conducted by public authorities* (section 30) – Information is exempt if it has at any time been held by the Academy 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.
- h. Law enforcement* (section 31) – Information which is not exempt under Section 30 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, ascertaining 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/recovering the property of a charity.
- Any civil proceedings brought by or on behalf of the Academy 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.

- i. Audit functions (section 33) – Information is exempt if disclosure would, or would be likely to, prejudice the exercise of an authority's functions in relation to the audit of the accounts of other public authorities. The exemption does not apply to internal audit reports.
- j. Formulation of government policy (section 35) – Information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (eg Attorney General) and the operation of any Ministerial private office.
- k. Prejudice to the conduct of public affairs (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.
- l. 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.
- m. 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.
- n. Environmental information* (section 39) – Information is exempt under FOI when it is covered by the Environmental Information Regulations.
- o. Personal information* (section 40) – 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.
- p. Legal professional privilege* (section 42) – Legal professional privilege covers any advice given by legal advisers, solicitors or barristers. Generally such information will be privileged. If the Academy wishes to disclose the information, we 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.
- q. 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 Academy. The duty to confirm or deny does not arise where prejudice to commercial interests would be the result. However, in relation to trade secrets section 43 does not remove the duty to confirm or deny.

Protective markings and Applying Exemptions

When considering if an exemption to disclosure should apply, we will bear in mind that the presence of a protective marking (Restricted, Confidential or Secret) 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, we will 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 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. To help ensure this, every case of refusal is reviewed by the Principal.