

FE Sector Freedom of Information Procedures

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Lois McKean	3	September 2024	September 2026
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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, CCTV footage, notes, drafts, emails and all communications. This 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 Data Protection & Information Compliance Officer (DPO@nwrc.ac.uk)
3. Once the information request has been transferred to the Data Protection & Information Compliance Officer, the procedures scope is limited to the Data Protection & Information 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 or 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. stating the name of the individual and an address for correspondence, and
3. describing the information requested.

Requests can be sent to the Data Protection & Information Compliance Officer at:

Data Protection & Information Compliance Officer
NWRC
78-80 Strand Road
Derry~Londonderry
BT48 7AL
DPO@nwrc.ac.uk

4. Recognising FOI Requests

A request may form either the main content of a communication or be integrated throughout a less obvious piece of correspondence. Requests may also be transmitted by email or via social media. Any form of written communication will be considered as a valid FOI request.

For the purpose of responding to a request, it will be considered in writing where it:

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 individual and equal merit, i.e. irrespective of the applicant or purpose of request. The College must not allow any opinion or prior history of an applicant influence consideration of the request. There are some provisions in FOIA 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 to enable the information to be located. 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 requires the College to provide advice and assistance where clarity is necessary to enable a response. The College may provide advice as to how the request could be reformulated to identify 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. A clarified request represents a new request for information and the 20 working day limit is paused until clarification is received and starts the day after receipt of further detail.

6. Charges

[Section 12](#) of FOIA provides an exemption for the College to refuse a request if the cost of compliance would exceed the appropriate limit of £450.

The estimate must be reasonable at all times in consideration of the cost of compliance with the request. The limit of £450 is calculated at £25 per hour, regardless of the grade of staff member(s) who would be involved in making the response.

In estimating the cost of compliance, the College will take into account if the cost of the following activities exceeds £450, and therefore [Section 12](#) exemption will be engaged:

- determining whether the information is held;
- locating the requested information, or records/documents containing it;
- retrieving the information, or records containing it;
- extracting the requested information from documents/records.

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, threatening or 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 that Section 14 is 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 allocated for complying with a request starts when the College receives it, not when it reaches the Data Protection & Information Compliance Officer or other relevant member of staff. It is, therefore, critical that all requests are forwarded to the Data Protection & Information Compliance Officer as soon as they are received.

The FOIA states that all requests must be responded to promptly and no later than the 20th 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 a request is received must be recorded to evidence the timescale for response. The clock begins from the date of receipt by the College, not by the Data Protection & Information Compliance Officer. Therefore, it is imperative that confirmed or suspected FOI requests are forwarded to DPO@nwrc.ac.uk as soon as possible so that:

1. Details of the request will be input onto the designated recording system.
2. The deadline for reply against the record can be noted.
3. An acknowledgement for receipt of request can be issued. 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 made, communications and guidance referred to.

10. Locating the Information/ Identifying the Responsible Owner

FOIA only applies to information which the College already holds in recorded format at the time of the request. 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 College's Publication Scheme, the Data Protection & Information Compliance Officer will make this available as a matter of routine business. The 20 days' timescale for response will still apply.

On receipt of a request, the Data Protection & Information Compliance Officer will identify where the 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 issues regarding the information that has been requested. This allows the Data Protection & Information 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 all records within their remit to determine what information is held.

If the information is not held by the College but by another 'Public Authority', the Data Protection & Information 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.
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 Data Protection & Information Compliance Officer and/or the information owner will engage at the earliest opportunity to retrieve all relevant information.

11. Responding to a Request

Once the requested information has been collated and it has been agreed for release, 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 in writing whether it holds the information specified in the request. This is also referred to as the duty to 'confirm or deny'.

Where the information requested is publicly available or accessible elsewhere, the College will direct the requester to the location of the information requested.

There may be occasions when by complying with the duty to confirm or deny, the College may, by default, disclose sensitive or potentially damaging information that would fall under an exemption. In these circumstances, the FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information under [Section 30\(3\)](#) and [Section 31\(3\)](#).

An individual may indicate their preferred means of obtaining the requested information, namely:

1. Permanent/physical form (e.g. hard copy)
2. Inspection
3. Summary of information
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 FOIA is to the public arena.

12. Exemptions

The main principle behind FOIA legislation is that individuals have a right to know about the activities of public authorities. However, there may be occasions where the College has a good reason, and is permitted to, withhold information.

There may be concerns about the disclosure of information to the public, for example particular types of information that could cause harm (or likely to cause harm) by disclosure or where disclosure may prejudice an investigation or commercial interest. The College can only withhold information 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 may 'interest' the public, but information that 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:** in some instances, an exemption is 'absolute' and therefore engaged and no further assessment is necessary. For example, information about security services. This does not require a Public Interest Test (PIT).
2. **Qualified:** the exemption is 'qualified' by balancing the factors between the public interest in maintaining the exemption and/or the public interest in disclosure. The College must conduct a public interest test (PIT). This exemption will be engaged/applied if the public interest in disclosure is not upheld by the PIT.

(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 based on the reasonable 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 contemplate the following when considering a Qualified exemption:

1. PIT (Disclosure)

- Accountability and transparency of decision making and expenditure
- Upholding standards of integrity
- Ensuring justice and fair treatment for all
- Securing best use of public resources
- Ensuring fair commercial competition
- Informing the public of danger to health and safety

2. PIT (Withhold)

- Exemption applied/engaged
- Exemption under legal professional privilege
- Prejudicial or detrimental impact of disclosure
- Prejudice of crime prevention or detection
- Human rights e.g. Right to Privacy
- Effect of disclosure on wider population e.g. personal data.

The College may extend the timeframe for response in order 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 can refuse a request for information if:

1. The request is vexatious or repeated ('identical or substantially similar' to a request from the same person, which was 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 informed in writing of this, it would not be considered as refusing a request but providing a negative response.

However, if the individual believes that the information requested is held by the College, this may progress as 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. Specification of 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 the response, detailing reasons for dissatisfaction and should be addressed to:

Data Protection and Information Compliance Officer
NWRC
78-80 Strand Road
Derry~Londonderry
BT48 7AL
DPO@nwrc.ac.uk

The Data Protection and Information Compliance Officer will convene a panel of independent personnel who will then examine the initial request and response. The request for appeal and review will consider areas for improvement and whether or not the College can reconsider releasing the originally requested information which had been withheld.

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