

University of Sunderland – Business Assurance Freedom of Information and Environmental Information Regulations Policy

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Freedom of Information and Environmental Information Regulations Policy

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Freedom of Information and Environmental Information Regulations Policy

1. INTRODUCTION

The Freedom of Information Act 2000 (FOIA) was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.

Access to environmental information is covered by a different set of regulations, the Environmental Information Regulations (EIR) 2004.

2. PURPOSE AND SCOPE

The purpose of this document is to set out:

- the main responsibilities for Freedom of Information within the University
- explain the University's obligations under the FOI Act 2000 and the Environmental Information Regulations 2004 and how the University will meet those obligations.

The Acts apply to all information, regardless of the medium on which it is held, and regardless of age.

Information held in non-work personal email accounts (e.g. Hotmail, Yahoo and Gmail) and file stores (e.g. Google Drive, iCloud, Dropbox) may be subject to FOIA if it relates to the official business of the University. Official information recorded on mobile devices, including text messages on mobile phones, or in any other media, may also be considered to be held on behalf of the public authority and therefore be subject to FOIA.

Members of staff or other relevant individuals may be asked to search private accounts as mentioned above for requested information. Where this has been deemed necessary to fulfil the University's obligations under FOIA, a record of the action will be taken.

3. DEFINITIONS

3.1. Datasets

The term "dataset" is defined in subsection 11(5) of FOIA. This definition contains a number of elements:

- information comprising a collection of information held in electronic form
- all or most of the information in the collection
- "all or most of the information in the collection" must be "factual"; quantitative not qualitative
- it is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007)
- all, or most of the information remains presented in a way that has not been organised, adapted or otherwise materially altered since it was obtained or recorded

3.2. Valid Request

Requests for information under the FOIA must be made in writing; however a request may be made verbally under EIR. In both cases a valid request for information should contain:-

- **Requestor's name**

A public authority is entitled to treat as invalid a request where the real name of the applicant (whether an individual or a corporate body) has not been used. However, as a matter of good practice the University should still consider the request, for example where identity is not relevant and it is content to disclose the information requested, even though technically the request is invalid.

- **Address**

Either an email or postal address is acceptable as an address for correspondence.

4. DUTIES AND RESPONSIBILITIES

The Executive member with overall responsibility for this policy is the Deputy Vice-Chancellor and Deputy Chief Executive. S/he is responsible for deciding on the outcome of internal reviews of Freedom of Information requests and EIR requests.

The Assistant Director of Business Assurance, who performs the role of the University's Senior Information Risk Owner (SIRO) is responsible for:

- Ensuring that an overall culture exists that values and protects information within the organisation
- Owning the organisation's overall information risk policy and risk assessment process, testing its outcome and ensuring that it is used
- Owning the organisation's information incident management framework

The Assurance Manager (Business Assurance - Information Governance), responsible to the Assistant Director for Business Assurance, is responsible for drawing up information governance and information security policy, process and guidance for good information security practice and ensuring compliance with this policy.

The Assurance Co-ordinator is responsible for responding to requests for information and ensuring Publication Scheme is populated and remains current.

The University Deans of Faculty and Directors of Support Services have responsibility for ensuring compliance with the University's Information Governance policies and ensuring any issues of non-compliance are addressed. They have responsibility for ensuring that an appropriate member of staff, in each Faculty and Service, takes on the role of "Information Champion".

The Information Governance Group is responsible for recommending policy direction on information governance to the Executive and monitoring that agreed policies are followed.

Information Champions are accountable to their Dean of Faculty/Director of Service and have a responsibility to monitor information governance compliance and awareness and be the primary point of contact and source of information and support within the Faculty/Service. The Information Champions Group will report to the Information Governance Group.

Individual employees and contractors have responsibility for ensuring that they comply with this policy and any related policies and guidance. Staff should attend training and awareness sessions provided by the University. Employees also have a duty to report any incidents or 'near misses' in relation to information governance.

5. POLICY DETAILS

5.1. Publication Scheme

The University will publish and maintain information on its website in the form of a publication scheme. The publication scheme will conform to the model publication scheme, as published by the Information Commissioner's Office. It will at minimum, consist of a series of documents and pieces of information which describe:-

- Who we are and what we do
- What we spend and how we spend it
- What our priorities are and how we are doing it
- How we make decisions
- Policies and procedures
- Lists and registers
- Services we offer

5.2. Freedom of Information and Environmental Information Regulation Requests

The University will respond within 20 working days to FOI/EIR requests, as required by the legislation. The 20 working days to respond to requests will be suspended where there is a need to clarify the nature of the request, or seek payment, in order to be able to answer the request. Once the clarification, or payment, is received the 20 working day "clock" starts again. No reason has to be given for making the FOI request, nor does proof of identity need to be supplied, but the request must meet the Information Commissioner's definition of a 'valid request'.

5.3. FOIA Exemptions

The FOIA contains a set of exemptions which may be applied to information before its release. The University will apply these exemptions when appropriate. A list of the exemptions can be found in Appendix A.

When considering an exemption that will involve undertaking a public interest test, and it is felt that it will take more than 20 working days from receipt of the request to reach a decision as to whether any part of the requested information is exempt, the University will notify the applicant immediately. An estimate of the date that it is expected that a decision will have been reached will be included in the response. Estimates will be realistic and reasonable, and compliance with the statutory timescales should always be the norm except where extenuating circumstances apply.

5.4. EIR Exceptions

Although the Environmental Information Regulations presume disclosure there are circumstances where this does not apply. There are a set of exceptions where, subject to a public interest test, the request should be refused. A list of the exceptions can be found in Appendix B. The University will apply these exceptions when appropriate.

5.5. Redaction of information

Where part of the requested information is considered exempt from release, that information will be redacted. The applicant will be informed that redaction(s) have taken place and cite the relevant exemption, and the reasoning for doing so if not obviously clear. Where there is so much information that needs redacting that it makes a

document nonsensical then the entire document can be withheld.

5.6. Duty to Assist

Section 16 of FOIA sets out the duty to provide advice and assistance. The purpose of this section is to ensure that the requestor is communicate with in order to discover what information they want and, where possible, help them to obtain it, so far as it is “reasonable to expect”.

Clarifying Unclear Requests

Where a written request has been received, but the applicant has not described the sought information in a way that would enable the University to identify or locate it, the University will contact the applicant as soon as possible, preferably by phone or email, to provide assistance to enable them to describe more clearly the information requested. The purpose of this contact will be to clarify the nature of the information sought, not to determine the aims or motivation of the applicant.

Information Held by Another Public Authority

Where it is believed that some or all of the information requested is held by another public authority, the University will inform the requestor that some of the information requested may be held by another public authority and provide the applicant with contact details, if available, for that authority.

5.7. Consultation with third parties

In some cases information could be requested that may carry a duty of confidence, i.e., was provided to the University by a person (in this case person may be an individual, company, local authority or any other legal entity) with the expectation that the information would only be disclosed in accordance with the wishes of that person.

Where disclosure of the information may give rise to an actionable breach of confidence, the University in considering release of the information, will consider if it should consult with the third party and seek their views.

5.8. Appeals and Complaints

When communicating any decision made in relation to a request, the University will notify the applicant of their right of complaint and of the review process for dealing with issues relating the publication scheme or handling of requests. They also be informed of the right to complain to the Information Commissioner.

Any written communication (including one transmitted by electronic means) expressing dissatisfaction with a response to a valid request for information, or operation of the publication scheme will be classed as a request for an internal review.

The internal review will be led by the Deputy Vice-Chancellor and Deputy Chief Executive and should be completed within 20 days of receipt of the complaint. Where the intended date of the review cannot be met, the applicant will be informed as to the delay, and be given a new date for completion.

The applicant will be informed of the decision and also of their right to appeal to the Information Commissioner.

Appeals or complaints following the response to an EIR request must be made within 40 days of the response. A response to the complainant will contain details of whether the University accepts that the EIR request was wrongly handled and if so what the University will do to put it right.

5.9. Charging Policy

The University will not normally charge for any information contained within the publication scheme. However, special requested formats will be charged on a case by case basis. In cases where the information is outside of the publication scheme, the University will charge for hard copies where the costs (staff time, printing, postage and packaging) amount to more than £20. The University will charge 10p per A4 black and white copy and 30p per A4 colour copy plus postage and packaging. Equivalent amounts will be charged for A3 copies. If the costs of obtaining the information amount to more than the maximum fee set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (£450 or 18 hours of staff time charged at £25 per hour), the University will advise the applicant to refine their request in order to reduce the costs to meet the Appropriate Limitations Regulations. If this is not possible the University can choose to refuse the request. The same fees will be applied to EIR requests; however, it is possible to refuse EIR requests on the grounds of costs.

Datasets

The Protection of Freedoms Act 2012 amended the Freedom of Information Act to oblige public authorities to release “datasets” in a reusable format. For disclosures of datasets which do not contain copyright materials, the usual FOI charging provisions will apply as set out above. Release of datasets which contain copyright material, but are not being released for re-use are also subject to these charging provisions.

The Freedom of Information (Release of Datasets for Re-use) (Fees) Regulations 2013 known as (Datasets Re-use Fees Regulations) set out the circumstances under which public authorities can charge to license re-use of datasets which contain copyright material.

When releasing datasets for re-use of copyright work, for which the University owns the copyright or database rights and which is not a Crown copyright or Parliamentary copyright work, one of the following licences will be used:-

- Open Government Licence (OGL) – the recommended licence to be used which permits the information to be re-used free of charge
- Non-Commercial Government Licence - a simple set of terms and conditions to enable the free re-use of government and public sector information for non-commercial purposes.
- Charged Licence – currently in beta (test) form for use by public sector bodies which have reason to charge for the re-use of the information

Use of licences and the charging of fees for datasets will be considered on a case by case basis.

Fees Notice

If fees are payable the requestor will be issued with a fees notice. The Business Assurance team will contact the Finance department in order that an invoice can be raised. The fees notice will state the amount to be charged and the basis for the fees.

6. RELATED POLICIES

This policy should be read in conjunction with the policies listed in Appendix A of the Overarching Information Governance Policy.

Appendix A - Exempt Information under Part II of the Freedom of Information Act 2000

There are two types of class exemption:

- **Absolute**, which does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure
- **Qualified** by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclosure information.

With the exception of section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

Absolute Exemptions

The Absolute exemptions under the Act are:

Section (of the Act)	Exemption
21	Information accessible to applicant by other means
23	Information supplied by, or relating to, bodies dealing with security matters
32	Court Records
34	Parliamentary Privilege
36	Prejudice to effective conduct of public affairs (so far as relating to
40	Personal Information (where disclosure may contravene the Data Protection
41	Information provided in confidence (see section of the policy)
44	Prohibitions on disclosure

Qualified Exemptions

The Qualified exemptions (which require the public interest test) are:

Section (of the Act)	Exemption
22	Information intended for future publication
24	National Security
26	Defence
27	International Relations
28	Relations within the United Kingdom
29	The Economy
30	Investigations and proceedings conducted by public authorities
31	Law enforcement
33	Audit Functions
35	Formation of Government Policy
36	Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
37	Communications with Her Majesty, etc. and honours
38	Health and Safety
39	Environmental Information
42	Legal Professional Privilege
43	Commercial Interests

Appendix B – Environmental Information Regulations – Exceptions

Regulation 12 of the EIR sets out various exceptions allowing public authorities to refuse to disclose environmental information. However, all the exceptions in the EIR are subject to a public interest test.

There is no requirement for a public authority to withhold information which would fall within an exception. The exceptions are not mandatory and a public authority may choose to release the information anyway.

Regulation (of the Act)	Exception
12(4)(a)	Information not held
12(4)(b)	Manifestly unreasonable requests
12(4)(c)	Requests formulated in too general a manner
12(4)(d)	Material in the course of completion, unfinished documents and incomplete data
12(4)(e)	Internal communications
12(5)(a)	International relations, defence, national security or public safety
12(5)(b)	The course of justice and inquiries exception
12(5)(c)	Intellectual property rights
12(5)(d)	Confidentiality of proceedings
12(5)(e)	Confidentiality of commercial or industrial information
12(5)(f)	Interests of the person who provided the information to the public authority
12(5)(g)	Protection of the environment
12(9)	Information on emissions
13	Personal information