



# Freedom of Information Policy

Policy Details	
<b>Produced by</b>	Vice Principal Partnerships, Funding and Business Planning
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## **1. Statement of Intent**

- 1.1 The college is committed to increasing openness and availability of information and as such has adopted the Model Publication Scheme for Further Education colleges as published by the Data Commissioner.

## **2. Introduction and Purpose**

- 2.1 Under the Freedom of Information Act 2000 any member of staff, student or member of the public can request information from the college which is not personal, commercially sensitive or comes within the exemptions to the Act.
- 2.2 Anyone can request information. A fee may be charged for the information provided. The amount will depend on the size and complexity of the request.
- 2.3 The college keeps a publication scheme which sets out what kinds of information the college will make available. This is detailed in Appendix 1.

## **3. Legal Background**

- a. The Awareness Guide ("AG") produced by the Information Commissioner
- b. The Code of Practice issued by the Department of Constitutional Affairs
- c. Data Protection Act 2018

## **4. Linked Policies and Procedures**

- a. Data Protection Policy
- b. Publication Scheme (Appendix 1)

## **5. Procedure for best practices**

- 5.1 The college fully complies with the step by step guide to dealing with freedom of information requests as published by the Association of Open Colleges (Appendix 2).
- 5.2 How to request information (Appendix 3).
- 5.3 Requests for information should:
- a. Be made in writing, by email, or by downloading and completing the information request form at the end of this document
  - b. State clearly what information is required
  - c. State your name and address for correspondence
  - d. Enclose the required fee.
- 5.4 The college will respond to the request for information within 20 working days of the receipt of the request (40 working days for personal information).
- 5.5 Publications Scheme (Appendix 1).
- 5.6 The college is committed to making information easily available and maintains a list of documents/information that is/are readily available.
- 5.7 Work is currently under way to ensure the information and documents will be available via the college website.

- 5.8** Some documents are free but a fee will be charged for costs incurred in printing, copying, packaging and posting - and where the document has been subject to professional time and skill.
- 5.9** In order to comply with the college's Data Protection Policy and General Data Protection Regulations (GDPR) certain information may require names (or other personal details) to be removed.
- 5.10** Information will be withheld where it contains personal information, information that may damage the commercial interests of the college, information that may threaten the health or safety of specific individuals, or information that comes within the other exemptions to the Freedom of Information Act 2000. A list of the exemptions are detailed in Appendix 4.
- 5.11** A flow chart is shown in Appendix 5 showing the steps required when dealing with a request under the Freedom of Information Act 2000.

## **6. Roles and Responsibilities**

- 6.1** The Vice Principal Partnerships, Funding and Business Planning is responsible for the implementation and management of this policy.

## **7. Monitoring, Review and Evaluation**

- 7.1** The college will review this policy on a biannual basis or sooner in order to take account of new statutory regulations and recommendations for improvement.

## **8. Communication**

- 8.1** The policy is published on the college Intranet for members of staff and on the VLE for students. Its review will be communicated by sending an e-mail to all staff; included in the staff bulletin; at staff briefings and/or at professional development days to provide, when required, training to new employees.
- 8.2** Under the requirements of the Freedom of Information Act 2000, the policy will be listed in the Publication Scheme and made available to the general public on request.

## **Appendix 1**

### **College Publication Scheme**

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities. Section 19 of the FOIA requires every public body to adopt and maintain a publication scheme which has been approved by the Information Commissioner, and to publish information in accordance with the scheme.

To reduce duplication and bureaucracy and to ensure consistency in the release of information, the Information Commissioner's Office (ICO) has developed a model publication for Further Education colleges. USP College has adopted the model publication scheme.

The information provided by USP College under the model publication scheme is provided on the college website and follows the guidance document provided by the ICO. 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, then the college will provide the information by another means (i.e. by post). Information held by USP College that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the Freedom of Information Act.

### **Obtaining Further Information or Providing Feedback**

It is important that this publication scheme meets your needs. If you find the scheme difficult to understand, or require further information please let us know via the contact details provided below. We also welcome suggestions as to how our scheme might be improved.

For a request to be treated as having been made under the Act, it must be:

- a. Made in writing
- b. State the name of the applicant and give an address for correspondence
- c. Describe the information which is requested.

### **Introduction**

This guide has been produced to meet the requirements of the Information Commissioner's Office (ICO).

The Publication Scheme and definition documents provided by the Information Commissioner's Office (ICO) for Further Education Colleges has been adopted by USP College with effect from 1 January 2009. The Corporation formally approved the detail and content of the scheme at its meeting on 25 March 2009.

## **1. Legal requirement**

- 1.1 Adopting a publication scheme is a requirement of the Freedom of Information Act 2000. This Act promotes greater openness and accountability across the public sector by requiring all 'public authorities' to make information available proactively, through a publication scheme.
- 1.2 Public authorities are defined in the Act and include universities, Further Education colleges and sixth form colleges.

## **2. What is a publication scheme?**

- 2.1 A publication scheme is a document which describes the information a public authority publishes or intends to publish. In this context, 'publish' means to make information available, routinely. These descriptions are called 'classes of information'. The scheme is not a list of the actual publications, because this will change as new material is published or existing material revised. It is, however, the public authority's commitment to make available the information described.
- 2.2 A publication scheme must set out the classes, or categories, of information published. It must also make clear how the information described can be accessed and whether charges will be made.
- 2.3 USP College has adopted the model publication scheme developed for the Further Education sector and is therefore committed to publishing the information it describes. The purpose of the model is to prevent institutions duplicating effort in producing individual schemes and to assist the public in accessing information from across the sector. However, to reflect the diversity in size and function of the institution, a number of optional classes of information are included. As a result, models within the sector will vary slightly. Any optional classes relevant to the college have been included in our scheme.

## **3. Who we are and what we do**

- 3.1 USP College is a further education college based in South Essex that has a long history of service to the local community and beyond. The college is clearly recognised by local stakeholders as a key partner in the social and economic regeneration of our community.
- 3.2 We provide a wide range of provision. As at October 2020:
  - a. Approximately 3500 full time 16-18-year-old
  - b. Approximately 200 Apprenticeships
  - c. Approximately 350 HE Students
  - d. Approximately 200 Adult Students.

## **4. Accessing information covered by the publication scheme**

- 4.1 The information colleges routinely publish falls into the following categories and these have been determined by the ICO:
  - a. What we are and what we do: Organisational information – structures, locations, contacts
  - b. What we spend and how we spend it: - Published accounts

- c. What our priorities are and how we are doing: Strategies and plans, performance indicators, inspections and reviews
- d. How we make decisions: Decision making processes, records of decisions
- e. Our policies and procedures: Current written protocols, policies and procedures for delivery of College services and responsibilities
- f. Lists and registers: Information legally required to be held in publicly available registers and logs
- g. The Services we offer: Prospectuses, leaflets, advice and guidance, newsletters.

4.2 Next to each class we have indicated the manner in which the information described will be available. We have also indicated whether charges apply to material in each class.

## **5. What about information not covered by the publication scheme?**

5.1 Under the Freedom of Information Act 2000, you have the right to request any information held by a public authority which it has made available through its publication scheme.

5.2 Requests will have to be made in writing and, the college will have 20 working days to respond. We may charge a fee, which will have to be calculated according to Fees Regulations. You should note we will not be required to release information to which an exemption in the Act legitimately applies (examples are identified below). However, where this is the case, we will explain to you why we are not releasing the information and we accept that we may also have to justify this to the Information Commissioner.

5.3 Exemptions include:

- a. Information already available elsewhere: If this is the case, we will, where we can, direct you to where you will find the information you are looking for
- b. Information provided in confidence: You should note that certain information is supplied to use in confidence and the Act obliges us to hold these things confidentially and not to disclose them
- c. Personal information: This is covered by the Data Protection Act and is only available to the individual concerned
- d. Investigations and proceedings: If an investigation is ongoing it is unlikely that we will be able to let you have information until all proceedings are finalized
- e. Information intended for future publications: If we intend to publish the information you want you may have to wait until it is published before you can have access to it
- f. Information that the Principal of the college decides is not in the public interest to disclose.

## **6. Our policy on charging for information**

6.1 Much of our information is available to you free of charge. However, because of the costs involved in locating or copying what you need, USP College retains the right granted under the Freedom of Information Act 2000 to charge fees where necessary and these will be in accordance with the Act and any other relevant legislation. Where compilation of data is in our view particularly onerous it will be our intention to charge an additional sum of £25 per person hour to cover locating documents, copying and postage (up to a maximum of £450 as defined within the Act).

## **7. Further information**

- 7.1 If we are unable to resolve any complaint, you can complain to the Information Commissioner, the independent body who oversees the Freedom of Information Act. More information about the Freedom of Information Act is available on the Information Commissioner's website, see below:

Information Commissioner  
Wycliffe House  
Water Lane  
WILMSLOW  
Cheshire  
SK9 5AF  
Tel: 01625 545700  
E-mail: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)  
Website at: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

## Model Publication Scheme for Further Education Colleges

1. Who we are and what we do			
Class	Description	Manner	Fee
1.1 Legal Framework	Instrument and Articles of Government for former Further Education College.	Website Email Paper	Free Free £5
1.2 Corporate Structure	Corporate Body Determination of Membership.  <ul style="list-style-type: none"> <li>Code of Conduct for members of the Governing Body</li> <li>The Terms of Reference for its Governing Board and its sub-committees</li> <li>Standing Orders</li> <li>Appointment of Board members, selection and eligibility</li> </ul>	Website Email Paper	Free Free £5
1.3 How the institution is organised	Organisational and management structure charts	Paper/e-mail	£10
1.4 Staffing Structure of Divisions	This class includes information about staff roles within divisions, together with organisation charts.  <ul style="list-style-type: none"> <li>Job titles of academic staff and support staff</li> <li>Contact details for each division/ department</li> </ul>	Paper/e-mail	£10
1.5 Information on the institutional context	<ul style="list-style-type: none"> <li>USP College's Strategic Plan (website address <a href="http://www.uspcollege.ac.uk">www.uspcollege.ac.uk</a>)</li> </ul>	Website  Paper/e-mail	Free  £10
1.6 Marketing and Recruitment	This class should include publications relating to student recruitment (UK and international), including the college prospectus.  <ul style="list-style-type: none"> <li>Prospectus (which includes entry requirements for courses)</li> <li>Open days</li> </ul>	Website Paper	Free
1.7 Public Relations	This class contains information that is created to help publicise our facilities and activities.  Press releases Prospectus Course brochures Newsletters and magazines	Website Website Paper Electronic	Free Free Free Free
1.8 Partnerships	The college delivers all of its HE provisions through a franchise agreement with the University of Hertfordshire and Writtle. This is formalised through an annual development plan and memorandum of agreement.	Electronic/paper	£10
<b>2 What we spend and how we spend it.</b>  <b>Financial Resources</b> This section covers information on the college's strategy and management of financial resources. The Finance Directorate provides accounting, procurement and contracting services, helping to make best use of resources and fulfilling statutory responsibilities. Information that may damage the institution's commercial interests will be excluded from publication.			

Class	Description	Manner	Fee
2.1 Funding/income	Information on the sources of funding and income, such as grants, tuition fees, endowment and investment income.	Electronic	£10
2.2 Budgetary and account information	Annual statement of accounts and other information to allow the public to see where money is being spent. <ul style="list-style-type: none"> <li>Annual accounts</li> </ul>	Electronic/paper	£10
2.3 Audit	Audit opinion as contained within the annual report and financial statements. <ul style="list-style-type: none"> <li>Financial Audit Opinion</li> </ul>	Electronic/paper	£10
2.4 Capital	Information on major plans for capital expenditure. Information related to capital expenditure upon completion of the project when accounts have been audited.	Paper	£10
2.5 Financial Regulations and Procedure	Statement of accounting policies.	Paper	£10 (per regulation )
2.6 Staff pay and grading structures	<ul style="list-style-type: none"> <li>Remuneration of senior staff as published in annual accounts</li> <li>Information on the grading structures used within college and the associated salaries</li> <li>Pension scheme information as contained in the annual accounts</li> </ul>	Electronic	£10
2.7 Register of Suppliers	A list of suppliers used with college	Electronic	£10
2.8 Procurement and Tender Procedures	Details of procedures used for the acquisition of goods and services.	Electronic/paper	£10

3. What our priorities are and how we are doing			
Class	Description	Manner	Fee
3.1 Corporate and Business Plans	<ul style="list-style-type: none"> <li>• Strategic Plan</li> <li>• Teaching &amp; Learning Strategy</li> </ul>	Electronic/paper Electronic	Free £10
3.2 Academic Quality and Standards	Quality Strategy	Electronic	£10
3.3 Government and Regulatory Reports	<p>This class relates to the information that the College is legally obliged to make available to its funding and/or monitoring bodies. Such material may provide information as to how well the institution is performing.</p> <ul style="list-style-type: none"> <li>a. OfSTED Inspection report – available on the OfSTED website.</li> <li>b. Government reports on FE such as: <ul style="list-style-type: none"> <li>i. Qualification Success Rates</li> <li>ii. Young People’s Funding Agency</li> <li>iii. Skills Funding Agency</li> <li>iv. National Top Ten point score per exam entry</li> </ul> </li> </ul>	Relevant websites  Department of Education	Free
3.4 Student Learning Support Services	<p>This class should include information on student support services from an academic and learning perspective, particularly those not covered under Information Services.</p> <ul style="list-style-type: none"> <li>a. Learning Support Guide</li> <li>b. Student Bursary Policy</li> <li>c. 19+ DSLP Policy</li> </ul>	Learner Handbook	£10 Free to Students
3.5 Mission Statements and related documents	<p>College Purpose</p> <p>College Charter</p>	Paper/email/web - site  Email/paper	Free £10

3.6 Information on internal procedures for assuring academic quality and standards	This class includes information about the college's internal quality audit programme and annual review. This could include:  Internal validation procedure Monitoring review and evaluation procedure Quality and provision policy	E-mail/paper E-mail/paper Paper	£10 £10 £10
	Information on assessment procedures and outcomes:  Student Assessment Policy  Information on student satisfaction with their college experience, covering the views of students on:  Student Entitlement Policy and associated documents: 16-18 statement Discipline procedures Student representation Parental involvement Induction and tutorial Complaints procedure Visits and residential Student Code of Conduct Student Assessment Policy and associated documents Quality of provision policy Equality and Diversity (students) policy Child Protection Policy Induction and Tutorial procedure	E-mail/paper	£10
	Information relating to the college's performance and its standards:  The college Report which includes: Achievement results Retention results Attendance Levels Average point scores for A levels	E-mail/paper	£10

4. How we make decisions			
Class	Description	Manner	Fee
4.1 Minutes from the Governing Body and Steering Groups	<ul style="list-style-type: none"> <li>• Governing Board minutes</li> <li>• Search &amp; Governance Committee minutes</li> <li>• Human Resources Committee minutes</li> <li>• Curriculum &amp; Standards Committee minutes</li> <li>• Finance Committee minutes</li> <li>• Audit Committee minutes</li> </ul>	Website Website Electronic Electronic Electronic Electronic	Free Free £10 £10 £10 £10
4.2 Minutes from the Academic Board	Academic Board Minutes	Electronic	£10

## 5. Our Policies and Procedures

This section covers information on the college's strategy policies and procedures (including terms and conditions of service). Information relating to individual members of staff is exempt from disclosure as personal information.

Class	Description	Manner	Fee
5.1 Employment and Employee Relations	Appraisal scheme VDU Eye Test and Glasses Policy Grievance Policy and Procedures Health and Safety committee minutes Health & Safety Policy Capability and Disciplinary Policy Special Leave Policy Staff Absence Management Policy Maternity, Adoption and Paternity Policy Whistleblowing Policy Safer Recruitment and Selection Policy Salary scales	Paper-Electronic	£10
5.2 Equal Opportunities/ Diversity Policy	The Single Equality Scheme is available on the website for free.	Paper E-mail/website	£10 Free
5.3 Staff Development	Staff Development Policy & Procedures Staff Induction	Paper/e-mail	£10 per document
5.4 Estates	Tendering policies Recycling policies Map of main buildings. Address of main site and any other locations.	Paper/Electronic Paper/Electronic Paper Website	£10 £10 £10 Free
5.5 Policies with regard to data and information	Policy statement on the secure storage, handling, use, retention and disposal of disclosures and disclosure information.	Paper Website E-mail	£10 Free Free
5.6 Academic year dates	This class includes information on the dates for the current academic year as well as future academic years (as far as is known).  College planner Prospectus Student induction pack	         Paper Website Electronic	£10 per document

<p>5.7 Further course information</p>	<p>This class includes information relating to programmes and qualifications.</p> <ul style="list-style-type: none"> <li>a. Term dates</li> <li>b. Divisional course guides</li> <li>c. Structure of programmes</li> <li>d. Qualifications gained <ul style="list-style-type: none"> <li>i. Work experience</li> </ul> </li> </ul>	<p>Paper/e-mail/ website</p>	<p>Free</p>
<p>5.8 Student assessment information</p>	<p>This class includes information on the regulations and/or policy governing student assessment.</p> <ul style="list-style-type: none"> <li>• Student Assessment Policy</li> <li>• Disciplinary Procedure</li> <li>• Appeals Policy</li> </ul>	<p>College Intranet  Paper/e-mail</p>	<p>Free  £10</p>

6. Lists and registers			
Class	Description	Manner	Fee
6.1 Information we are legally required to hold in registers.	<ul style="list-style-type: none"> <li>Register of Interests</li> <li>Asset register</li> <li>Freedom of information/Data protection request logs</li> </ul>	Paper Electronic Electronic	£10 £10 £10

**7. The Services we Offer**

**Student Administration and Support**  
 This section contains information on how the college manages the administration and progression of students from admission to course completion, including student support services. Information does not include specific student personal details, by virtue of being personal information.

Class	Description	Manner	Fee
7.1 Information on student admission, progression and completion	<ul style="list-style-type: none"> <li>Entry criteria</li> <li>The range of student entrants classified by age, gender, disability as returned to SFA</li> <li>Student progression, retention and completion data</li> <li>Results analysis</li> </ul>	Prospectus Paper	Free £10
7.2 Student accommodation	USP College has no student accommodation		
7.3 Student administration	<ul style="list-style-type: none"> <li>Course prospectus</li> <li>Student records policies and procedures (included in the ILR data regulations)</li> <li>Security and data protection – included in the Data Protection Policy</li> </ul>	Paper Gov website  E-mail	Free Free  Free
7.4 Student enrolment and admission	This class includes information relating to the admission/enrolment of new students, including policies and procedures covering the assessment of external qualifications, the creation of students' records, the coordination of student funding arrangements and the division of responsibilities between central admissions or equivalent and college/school/faculty staff. <ul style="list-style-type: none"> <li>Exams Policy</li> <li>Admissions and Enrolment Policy</li> </ul>	Paper	£10

7.5 Student discipline	This class includes information relating to the conduct of disciplinary proceedings against students:  <ul style="list-style-type: none"> <li>• Student Positive Behaviour Policy</li> <li>• Complaints Procedure</li> </ul>	Paper/e-mail Website/paper	£10 Free/£10
7.6 Student liaison	This class includes information relating to the structure and functioning of staff/student consultative committees or other liaison groups.  <ul style="list-style-type: none"> <li>• Minutes of Student Council meetings</li> </ul>	Paper or e-mail	£10
7.7 Student policies and procedures	This class includes a guide to all student policies issued by the college:  <ul style="list-style-type: none"> <li>• Enrolment form</li> <li>• Child Protection Policy (refer to LCC for full document)</li> <li>• Induction and tutorial procedure</li> <li>• Visits and residential</li> <li>• Student Positive Behaviour Policy</li> </ul>	Paper or e-mail where available Electronically Free to students	£10
7.8 Student welfare	<ul style="list-style-type: none"> <li>• Learning support guide</li> <li>• UCAS handbook</li> </ul>	Paper	£10 (free to students)
7.9 Student associations and activities	This class contains information relating to the operation and activities of the Student Council which is organised for or by the students:  <ul style="list-style-type: none"> <li>• Student representation procedure</li> <li>• Enrichment procedure</li> <li>• Student Council minutes</li> </ul>	Notice boards Paper or e-mail where available	Free £10
7.10 Availability and conditions of use of facilities	Active Learning Zones opening hours.  Student catalogues and guides are available in each active learning zone.  <ul style="list-style-type: none"> <li>• Computing Code of Practice – internet/ e-mail acceptable use policy</li> <li>• Copyright agreements-Educational Recording Association (ERA) and Copyright Licensing Association (CLA)</li> </ul>	On display on site.  Available to view on site to students/ electronic. Electronic  Paper copy	Free  Free/£10  £10  £10

<p>7.11 Scope of collections held</p>	<ul style="list-style-type: none"> <li>• Active Learning Zone (ALZ) guides for subject areas</li> <li>• Computerised records of ALZ stock.</li> </ul>	<p>On display in ALZ  Talis database with onsite access</p>	<p>Free</p>
<p>7.12 Tuition Fees</p>	<p>This class should include information relating to tuition fees for UK students, EU students and other international students, including information on when tuition fees will be payable and how to pay.</p> <p>Examples of the type of information in this class include:</p> <ul style="list-style-type: none"> <li>• Information for home/EU students</li> <li>• Information on other charges</li> <li>• HE &amp; Adult Loans Policy</li> </ul>	<p>Paper/prospectus</p>	<p>Free</p>

## Appendix 2

### Step by step guide to dealing with freedom of information requests

This guide sets out further details to accompany the flow diagrams dealing with a FOIA request.

There is extensive published official guidance on the FOIA published by the Information Commissioner and the Department for Constitutional Affairs. This step by step briefing summarises that guidance available.

At the beginning of each part the key provisions and guidance are identified.

In particular, reference is made to:

- a. The Awareness Guide (“AG”) produced by the Information Commissioner (<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/>)
- b. The Code of Practice issued by the Department of Constitutional Affairs referred to here as the “Access Code” ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722476/Secretary\\_of\\_State\\_for\\_Constitutional\\_Affairs\\_Code\\_of\\_Practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722476/Secretary_of_State_for_Constitutional_Affairs_Code_of_Practice.pdf)).

This guide reflects the law as at April 2005.

The parts are as follows:

- a. Receiving a request
- b. Vexatious and repeat requests
- c. Information “held”
- d. Costs and fees charges
- e. Absolute exemptions
- f. Qualified exemptions
- g. Refusal notices
- h. Complaints

#### Part 1: Receiving a request for information

**Key provisions: FOIA sections 1, 8 and 10**

**Key guidance: AG 11, AG 23; Access Code section II**

#### Form of requests for information

Requests for information need not mention the FOIA but must:

- a. Be in writing (which includes email and fax)
- b. Give the applicant’s name and return address
- c. Describe the information being sought.

#### What if the college requires further information to comply with the request?

Where it is reasonable to do so, the college may ask the applicant for further details of the request to enable the college to identify and locate the information requested, e.g:

- a. Where the request is not in English
- b. Where the request is not sufficiently precise for the college to be clear what information is sought
- c. Where a more focused request would assist the college in reducing the cost of compliance below the appropriate limit (see **Part 4**).

#### Time limit for compliance

The college must comply with a request **promptly** and in any event not later than the **twentieth working day** following the date of receipt.

The 20 working day period starts on the working day after the day on which the college receives the request (for example, if the College receives a request on a Friday, time starts running on the following Monday). "Working days" exclude weekends and bank holidays but include days upon which the College is closed but which are neither weekends or bank holidays.

**However:**

- a. If the College reasonably asks for further details to enable it to comply with the request, the 20 working day period does not start running until the College receives those details (*please note that the College must not delay in requesting further details simply to give it more time to respond to the applicant's request*)
- b. If the College requires the applicant to pay a fee (see **Part 4**), the 20 working day period "stops" on the working day before the day on which the College sends a fee notice to the applicant and "re-starts" the working day after the College receives the fee
- c. If one of the qualified exemptions applies to the information requested and the College has to apply the public interest test (see **Parts 6(1) and 6(6)**), the College may extend the 20 working day period for a reasonable time in order to consider the public interest test. The College must notify the applicant of the estimated date for response.

**What duty does the College have to advise and assist applicants?**

The college is under a statutory duty to provide advice and assistance to applicants. The college can fulfil this duty by complying with relevant provisions of the Access Code. The college should, amongst other things:

- a. Publish its procedures for dealing with freedom of information requests, including an address and telephone number for information and assistance
- b. Ensure that appropriate assistance is given to enable an applicant to make a request in writing where the applicant is unable or has difficulty to do so
- c. Provide assistance to the applicant to enable him to describe more clearly the information requested
- d. Consider whether any suitable information is available free of charge if the applicant is not prepared to pay any requested fee
- e. Where the cost of complying with the request would exceed the appropriate limit (see **Part 4**), consider what, if any, information could be provided within the cost ceiling.

**Part 2 : Refusing to Deal with Request**

**Key provisions: FOIA sections 1, 14 and 17**

**Key guidance: AG 22**

The FOIA allows the College to refuse to comply with a request for information that is vexatious or repeated.

**Vexatious requests**

What is a vexatious request?

A request is vexatious if a reasonable person would conclude that the effect of the request would be disproportionate or cause inconvenience or expense to the College, and that the request:

- a. Clearly does not have any serious purpose or value
- b. Is designed to cause disruption or annoyance
- c. Has the effect of harassing the College
- d. Can otherwise fairly be characterised as obsessive or manifestly unreasonable.

**What factors can the college consider in deciding that the request is vexatious?**

The college must consider the nature of the request, **not** the nature of the applicant.

Factors which may suggest that requests are vexatious include:

- a. The declared intention of the applicant or the college's knowledge of the applicants intentions (e.g. where the college knows that there is an orchestrated campaign to cause the college inconvenience)

- b. The request clearly has no serious purpose or value (this will often arise where there has been a series of requests)
- c. The effect of legitimate editing of the information (e.g. the deletion of confidential materials) would render the information worthless
- d. The information requested is clearly exempt.

### **Repeated requests**

Requests from the same applicant that are identical or substantially similar may be deemed repeated requests.

In some cases, identical or substantially similar requests may not be “repeated”, e.g.

- a. A reasonable interval has elapsed between them
- b. The applicant is different (but see below)
- c. The information to be disclosed has changed in the intervening period.

### **Is the applicant the same?**

It is possible that many different individuals will make identical or substantially similar requests. If the College is, or becomes, aware that the individuals are acting as part of a group seeking to make vexatious or repeated requests, the College is entitled to refuse the requests.

### **What should the college do now?**

If the college considers that a request is vexatious or is a repeated request, the college must notify the applicant and inform him why the request is considered vexatious or repeated. The college must also enclose a complaints notice (see Part 8).

## **Part 3: Holding Information**

***Key provisions: FOIA section 3***

***Key guidance: AG 12***

### **Information “held” by the College**

The college only needs to deal with requests where the College holds the information. This part sets out the basic concepts as to what information is regarded as being “held” by a public authority for the purposes of the FOIA. It is not a simple case that everything the College has is subject to the FOIA.

The FOIA applies to information which the college possesses. This captures:

- a. Information which the college holds
- b. Information which is the college’s but has been passed to another public authority
- c. Information which belongs to the college but is held by another party on the Colleges behalf (e.g. information held by the college solicitors or accountant).

### **Information “belonging” to somebody else**

The college may hold information on behalf of somebody else. This information may not be caught by FOIA. A distinction is drawn between the origin of information and whether it is held on behalf of another. Where the college effectively controls the information and holds it in its own right, for its own purposes, the information is unlikely to be held “on behalf” of another.

Different considerations apply depending on whether the information is held on behalf of another public authority or a private body.

### **Other public authorities’ information**

The college may be in possession of information that “belongs” to another public authority (for example the Learning and Skills Council) and which the college has on the other bodies behalf (rather than for its own purposes).

Where an applicant asks the college for such information, the college is not obliged to provide it because it is the other public authority that “holds” the information under the FOIA. However, the college is under a duty to advise and assist the applicant.

There are various options in dealing with this situation:

- a. Ask the applicant to re-direct the request to the originating public authority; or
- b. Transfer the request to the other public authority; or
- c. Deal with the request but consult with the other public authority as it is their responsibility to make the disclosure decision.

### **Private bodies’ information**

The college may hold some information on behalf of private individuals or companies in the private sector. This information is not caught by the FOIA. However, in most cases, private sector information held by the college will be for the college own purposes and therefore it will be caught by the FOIA.

There may be cases where it is unclear whether private information would be subject to the FOIA. A good example is tender documentation. The documentation provided by the competing companies belongs to the individual companies, however this information has been produced for the colleges purpose of determining who should carry out the work.

The AG guidance indicates that the college should deem itself to hold the information and apply the provisions of the FOIA to exempt disclosing such information rather than asserting that the information is held on behalf of the companies.

### **Non official information**

The AG guidance refers to “non official information” which is information not created by members of staff in the course of their duties. Examples include, trade union communications and personal written communications such as emails. In the guidance it is suggested that “non-official information” is not caught by the FOIA.

### **What should the college do now?**

Even in cases where the college does not hold information for the purpose of the FOIA, you will still need to reply to the applicant. While the college will not be under any duty to provide the information, you will still need to provide advice and assistance. (**See Part 1**)

## **Part 4: Fees and Charges**

**Key provisions: FOIA Sections 9, 12 and 13, The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004**

**Key guidance: DCA Guidance on the application of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004**

### **The appropriate limit – the costs cap**

Under the FOIA, the college is not required to comply with a request for information if the college estimates that the cost of complying would exceed the “appropriate limit”. For the college (and all public authorities other than central government departments), the current “appropriate limit” is £450.

The appropriate limit has to be applied separately to each of the duty to confirm or deny and the duty to disclose information pursuant to a request.

### **How should the College estimate the cost of complying with a request for information?**

In estimating whether the cost of complying with a request for information is likely to exceed £450, the College can only take account of the costs it reasonably expects to incur in:

- a. Determining whether it holds the information requested
- b. Locating the information
- c. Retrieving the information

- d. Extracting the information from a document containing it.

The College must use a figure of £25 per person per hour in estimating the cost of the labour involved in any of these four activities, regardless of the actual cost. The labour can be either the College's own staff or independent contractors engaged by the College to assist with handling the requests for information.

In effect, the College should consider whether it will take longer than 18 hours to carry out the above activities.

For these purposes, the College cannot consider the costs (including labour costs) of:

- a. Giving general advice and assistance to the applicant
- b. Considering whether further details are required from the applicant
- c. Considering whether the request is vexatious or repeated
- d. Calculating any fees to be charged
- e. Consulting with third parties
- f. Considering whether any exemptions apply, including any legal costs incurred in deciding whether any exemptions apply.

#### **What if the estimated cost of complying with a request is £450 or less?**

Where the estimated cost of complying with a request is not greater than £450, the College can charge for costs that it reasonably expects to incur in informing the applicant whether the College holds the information and communicating the information to the applicant, including post, copying and if necessary converting the information into the format requested by the applicant. **The College cannot charge for the labour involved.**

Costs have to be reasonable. For example, photocopying is "expected" to cost no more than 10p per sheet.

Where the cost of complying is very low (less than £10), the College is encouraged to waive the fee altogether.

#### **What if the estimated cost of complying with a request is greater than £450?**

The College need not comply with a request for information where the College estimates the cost of doing so would exceed £450. However, the College would still have a duty to confirm or deny whether it held the information, unless the cost of even doing this would exceed £450.

The College will be under a continuing duty to provide the applicant with advice and assistance. Therefore, the College should consider whether:

- a. It is prepared to comply with the request, even though the estimated cost would exceed £450
- b. There is other information that the College could provide at a lower cost or free of charge
- c. Whether the information is available elsewhere.

If the College does not wish to comply with a request where the cost of complying would exceed £450, it must notify the applicant the estimated cost of complying with the request is above £450 and send to the applicant a "complaints notice" (**Part 8**).

#### **What if the College wishes to comply with a request where the cost will exceed £450?**

In these cases, the fee charged can include the cost of labour. The fee charged must be no more than the total of the costs reasonably incurred (including labour at £25 per person per hour) by the College in:

- a. Determining whether it holds the information
- b. Locating the information
- c. Retrieving the information
- d. Extracting the information
- e. Informing the applicant whether the College holds the information.
- f. Communicating any information to the College (including, e.g., post, fax, copying charges)

In calculating the fee the College must disregard the costs of considering whether any exemptions apply and cannot charge one applicant for the total cost of complying with aggregated requests received from a number of applicants (see below).

### **Aggregated requests**

The College can aggregate the estimated costs of complying with a request for information, for the purposes of assessing whether the £450 limit is exceeded, where the College receives two or more requests for information which:

- a. Are from the same person or from different persons who appear to the College to be acting “in concert” or in pursuance of a campaign
- b. Relate to the same or similar information
- c. Have been received by the College within a space of 60 consecutive working days.

As a matter of **best practice** the College should exercise extreme caution when deciding whether requests should be aggregated. The College should only aggregate the core requests where there are strong grounds for believing that they have been framed precisely in order to circumvent the £450 limit.

### **Fees notices**

The College is only legally obliged to serve a fees notice where the estimated cost of complying with a request is £450 or less. However, **as a matter of best practice**, the College should issue a “fees notice” whenever it wishes to charge a fee. The College must serve a “fees notice” on the applicant within the 20 working day period (see **Parts 1 and 4**). Where the proposed fee is significant, the College should invite the applicant to discuss whether a free or cheaper format or a narrower request might be acceptable.

Having served a “fees notice”, the College is not obliged to comply with a request for information unless it receives the required fee within 3 months of the “fees notice” being sent to the applicant.

See **Part 1** for the effect that serving a “fees notice” has on the 20 working day period.

If the applicant does not agree with a fee, they can appeal to the Information Commissioner.

### **What if the actual cost of complying with the request is different to that stated in the fees notice?**

The College must bear any excess cost above the fees paid by the applicant pursuant to a fees notice. However, the College should consider refunding any excess fee paid by the applicant in excess of the actual cost.

### **VAT**

The College should note the following quirk when charging fees:

- a. If the cost of complying with a request does not exceed £450, the fees charged by the College will **not attract VAT**; BUT
- b. If the cost of complying with a request does exceed £450, and the College chooses to provide the requested information, the fees charged by the College **will be subject to VAT in the normal way**.

## **Part 5: The Absolute Exemptions**

### **(1) Introduction**

The exemptions are split into two categories – absolute exemptions and qualified exemptions. This part looks at the absolute exemptions and how these operate. **Part 6** concentrates on the qualified exemptions.

It must be remembered that the College has two duties:

- a. To confirm or deny whether it holds the information
- b. To provide the information.

The exemptions must be used separately in relation to each duty. The exemptions are worded by reference to whether the requested information may not be disclosed. Care must be taken to assess whether the duty to confirm or deny arises.

Where the College is seeking to rely on an absolute exemption, it is also generally the case that the duty to confirm or deny will also be exempt. However, this does not always have the same effect for all the absolute exemptions. This is highlighted for each exemption in the following pages. Of particular note, under section 21 (see **Part 5(2)**) the duty to confirm or deny must always be considered separately.

Set out below are the absolute exemptions which are likely to be applicable to an FE College. There is further detail on each of these exemptions in the following pages. If the College is considering applying another absolute exemption, specific legal advice should be sought.

**Part 5(2): Section 21, Information accessible to the applicant by other means**

**Part 5(3): Section 32, Court Records**

**Part 5 (4): Section 40, Personal Information**

**Part 5 (5): Section 41, Information provided in confidence**

**Part 5 (6): Section 44, Prohibitions on disclosure**

**Part 5 : The Absolute Exemption**

**(2) Section 21, Information reasonably accessible to the applicant by other means**

**Key provisions: FOIA sections 1,16 and 21**

**Key guidance: AG 6**

**What is “information reasonably accessible by other means”?**

Information is reasonably available to the applicant by other means:

- a. Even if there is a charge for the information (e.g. where the information is provided under the College’s publication scheme and the scheme indicates that a charge maybe made) provided the charge is reasonable
- b. Where the College is under a legal duty to make that information available **except**:
  - i. Where the information is not covered by the College’s publication scheme, and
  - ii. Where the information is only made available for inspection.

Information that is “only available on request” is not “reasonably accessible” for the purpose of the FOIA. Further, if the information requested is held by another public authority it is not enough to say that another public authority holds the information - the information must be on the publication scheme in order to refuse to deal with the request under this particular exemption. This is because the information is only regarded as reasonably accessible if it is truly readily available.

Although the FOIA does not give the College the right to enquire as to the circumstances of the applicant, if it is notified of any factors that may affect the applicant’s ability to access the information it should consider these when deciding whether the information is reasonably accessible to the applicant by other means. Such factors may include:

- a. Travelling and mobility
- b. Non-English speakers
- c. Disability
- d. Lack of access to the internet.

**What are the College’s duties if the information is available by other means?**

The College does not need to provide information under the FOIA if that information is reasonably accessible to the applicant by other means.

The College does still need to confirm or deny whether it holds the information.

The College needs to comply with the duty to provide assistance which will usually involve directing the applicant to where the information can be obtained.

### **How should the College respond to the applicant?**

The College should respond to the applicant notifying them of the alternative means by which the information is accessible and of any fee payable.

## **Part 5 : The Absolute Exemptions**

### **(3) Section 32, Court Records**

**Key provisions: Section 32**

**Key guidance: AG 9**

**See also ICs website - Freedom of Information Casework Guidance on Court Records**

Court records are exempt from disclosure under the FOIA. The College **does not** have a duty to confirm or deny whether it holds this information or a duty to disclose it.

A court record is a document which has been:

- a. In the custody of a court
- b. Served upon a public authority, for the purpose of court proceedings
- c. In the custody of a person conducting an inquiry or arbitration
- d. Created by a court for the purpose of court proceedings; or
- e. Created by a person conducting an inquiry or arbitration.

It should be noted that the exemption does not operate once the court records are 30 years old.

The purpose behind this exemption is to leave the existing rules in relation to access to court records intact. If the College is engaged in litigation, documents relating to that litigation may be covered by this exemption or legal professional privilege (see **part 6(4)**).

## **Part 5 : The Absolute Exemptions**

### **(4) Section 40, Personal Information**

**Key provisions: FOIA Section 40**

**DPA 98 Section 7 Schedules 1, 2, and 3**

**Key guidance: AG 1**

Information about a living individual is exempt from disclosure under FOIA. However:

- a. Where the applicant is seeking information about themselves, the request should be dealt with as a subject access request under the Data Protection Act 1998.
- b. Where an individual requests information which contains another person's personal information, consideration should be given to disclosure unless to do so would breach the "fair processing" principles under the Data Protection Act 1998.

A basic description of the Data Protection Act 1998 ("DPA98") is given below. More detail is beyond the scope of this briefing.

### **What is personal data?**

Personal data is information relating to an identifiable living individual. Under the current law the information must affect the individual's privacy in his personal, family, business or professional life.

In order to establish whether information is personal data there are two notions to assist.

- a. Whether the information is biographical in a significant sense (ie it has some bearing on the person's personal, family, business or professional life)
- b. Whether the individual is the focus of the information (ie a mere passing reference to the individual's name is unlikely to be personal data).

## **Dealing with requests for the applicant's personal data - subject access requests**

It is common for applicants to ask for information about themselves and cite the FOIA. Such requests fall to be addressed as subject access requests under the DPA98. The DPA98 follows a different procedure and is beyond the scope of this briefing.

If part of the request for information that is not personal data, that part needs to be addressed under FOIA.

The applicant should be informed as to how his request is to be addressed.

## **Dealing with freedom of information requests where personal data of another individual is involved**

An applicant may request information that includes the personal data of another individual. The College needs to be aware that it may not be appropriate to disclose the personal data of another individual ("the data subject").

Under section 40 FOIA a third party's personal data will be exempt if disclosure of the information will breach any of the data protection principles.

Where disclosure of personal data could be done without breaching the data protection principles, the data subject may have a right under section 10 of the DPA 98 to prevent the disclosure of his information if it is likely to cause him damage or distress. In these circumstances, the College will need to apply the public interest test (See **Part 6 (1)**) to decide whether it should disclose the information even though an individual may exercise his rights under section 10.

## **What should the College do?**

If the College seeks to rely on this exemption it must carry out the following steps in relation to the different applications of the exemption.

- a. Where an individual requests information about themselves, the College should inform the applicant that the College will treat the request as a subject access request under the DPA 98 and request the permitted £10 fee (if charged). The College has no duty under the FOIA to confirm or deny whether it holds any of the applicant's personal data.
- b. Where an applicant requests information about another's personal data and the exemption applies, the College must issue a refusal notice (see **Part 7**). The College has no duty to confirm or deny whether it holds this information if to do so would breach the data protection principles or s.10 DPA 98.

## **Part 5 : The Absolute Exemptions**

### **(5) Section 41, Information provided in confidence**

**Key provisions: FOIA sections 1 and 41**

**Key guidance: AG 2**

The College is not required to disclose information that was provided to it in confidence. Note that the College may not consider its own information to be "confidential".

## **What is "information provided in confidence"?**

Two conditions must be met:

- a. The information must have been obtained from a third party; and
- b. The disclosure of that information must be an actionable breach of confidence.

## **What is an "actionable breach of confidence"?**

Three conditions must be met for a disclosure of information to be an actionable breach of confidence:

- a. The information must be confidential – it must not be in the public domain and must not have been treated as non-confidential in the past. Information is not confidential simply because it has a “confidential” stamp on it
- b. The confidence must have been provided in circumstances giving rise to a duty of confidence; e.g. an agreement between the College and the third party requiring it to be kept confidential
- c. An unauthorised disclosure of that information would cause a loss to the confider.

### **How can the College decide if a duty of confidence has arisen?**

The conditions under which the College received the information must be examined. Information may be expressly stated to have been given in confidence. For instance, by specific contractual terms or a separate confidentiality agreement; or confidentiality may be obviously implied from the circumstances (for example, in a contract negotiation meeting).

Often documents which have been provided in confidence will carry protective markings, such as “confidential”. Whilst this may provide a preliminary indication, it is not conclusive that the information is within the document confidential.

In many cases it will be appropriate for the College to consult with the confider to establish why information is said to be confidential. However, **the final decision on whether information should be disclosed under FOIA, rests with the College.**

### **Can the College disclose information provided in confidence?**

Confidential information can be disclosed in three circumstances:

- a. With the consent of the third party to whom the duty of confidence is owed;
- b. When disclosure is required by law other than the FOIA; or
- c. Where there is an overriding public interest in disclosure. Please note this is a higher test than the public interest test under the FOIA. Technically it is a defence to a breach of confidence if there is an overriding public interest that this information should be in the public domain. If considering this, seek legal advice.

Where the College decides to disclose information under FOIA in circumstances in which a third party claims that the information is confidential, the third party **may** have a right of action against the College. Advice should be sought.

### **Can the College disclose some aspects of information but not others?**

Where only certain sections of the information requested are confidential, the College should consider concealing those parts of the information and disclosing the remainder.

### **What are the College’s duties if the exemption applies?**

If to confirm or deny that the College holds the confidential information would itself be an actionable breach of confidence then the duty does not arise. However, it may be that the College can confirm that it holds confidential information without breaching a duty of confidence.

## **Part 5 : The Absolute Exemptions**

### **(6) Section 44, Prohibitions on disclosure**

**Key provisions: FOIA Section 44**

**Key guidance: AG 27**

This exemption covers information which is prohibited from disclosure under other legislation.

Information is exempt if its disclosure by the College is:

- a. Prohibited by or under any enactment
- b. Is compatible with any European obligation
- c. Would constitute a contempt of court.

Where this exemption applies the duty to confirm or deny does not arise.

## **Part 6: The Qualified Exemptions**

### **(1) Introduction**

The exemptions are split into two categories – absolute exemptions and qualified exemptions. This part looks at qualified exemptions and how these operate. Part 5 concentrates on absolute exemptions.

A qualified exemption means that there are two tests to be applied:

- a. Whether the exemption applies;
- b. Whether the public interest test in disclosing the information outweighs the public interest in not disclosing (“the public interest test”).

### **The Public Interest Test**

**Key provisions: FOIA section 2**

**Key guidance: AG 3**

#### ***DCA guidance on “what is the public interest?”***

The term “public interest” is not defined in the Act. However, it is clear that something that is “in the public interest” is something which serves the interest of the public *not* something which is merely of interest to the public. In balancing the public interests, the College is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.

There is a general presumption that it is the public interest to disclose information but this must be balanced against the need to facilitate effective government and public administration. Therefore, there may be particular public interest considerations in favour of refusing the request. In effect the qualified exemptions provide the public interest considerations for withholding information.

#### **How should the College apply the public interest test?**

In applying the public interest test, the College will have to balance two competing public interests: the public interest in disclosing the information and the public interest in maintaining the relevant exemption and withholding the information.

When balancing the public interests, the College should **not** give weight to:

- a. The private interest of the College in withholding information because the information would reveal incompetence or cause embarrassment; or
- b. The fact that the information is complicated or incomplete. In these circumstances, the College may explain or give the context for the requested information.

#### **Factors weighing for or against the disclosure of information**

##### **Factors favouring disclosure      Factors against disclosure**

Disclosure would...

- a. Further understanding and debate of current issues, especially issues in the media
- b. Promote accountability and transparency in the spending of public money
- c. Promote understanding of decisions taken by the College and how to challenge them.

The factors are set out in the exemptions.

For example, it is in the public interest to protect:

- a. Law enforcement
- b. Investigations and proceedings
- c. Legal professional privilege.

In some cases disclosing information will hinder effective government where:

- a. Information is disclosed prior to its proposed publication date
- b. Information is disclosed which will inhibit proper discussion.

In other cases disclosure will make it difficult to ensure that effective government occurs if:

- a. Commercially sensitive information is released
- b. Trade secrets are revealed.

### **The duty to confirm or deny qualified exemptions**

Separate consideration must be given to the duty to confirm or deny, both in respect of whether the qualified exemption applies and in respect of the public interest test.

### **Refusing a request due to a qualified exemption**

If the College refuses either to disclose requested information or to confirm or deny that information is held, it must issue a refusal notice stating that the request is being refused, the exemption used and why the exemption applies.

The College must make sure that it makes it clear in the refusal notice that it has applied the public interest test in respect of each duty. (See **Part 6**)

### **Qualified exemptions**

Set out in the following pages are details on the main exemptions which are likely to be useful for the College.

#### **Part 6(2): Section 22, Information intended for future publication**

#### **Part 6(3): Section 36, Prejudice to effective conduct of public affairs**

#### **Part 6(4): Section 42, Legal professional privilege**

#### **Part 6(5): Section 43, Commercial Interests**

### **Part 6: The Qualified Exemptions**

#### **(2) Section 22, Information intended for future publication**

**Key provisions: FOIA Section 22**

**Key guidance: AG 7**

This exemption allows public authorities to refuse a request where the information is intended for future publication.

The decision to publish must have been taken before the request is received, although, a definite date for the future publication need not have been set.

The exemption is subject to the public interest test and so the College must decide whether it is in the public interest to disclose the information early.

### **Part 6: The Qualified Exemptions**

#### **(3) Section 36, Prejudice to effective conduct of public affairs**

**Key provisions: FOIA Section 36**

**Key guidance: DCA guidance – see DCA website**

#### **How the exemption operates**

This exemption allows the designated person to determine in his reasonable opinion whether disclosure of the information would have one or more of the following effects:

- a. Would or would be likely to inhibit the free and frank provision of advice; or

- b. Would or would be likely to inhibit free and frank exchange of views for the purpose of deliberation; or
- c. Would otherwise prejudice or be likely otherwise to prejudice, the effective conduct of public affairs.

### **The designated person**

At the time of writing it is understood that the designated person for further education colleges will be the Principal. This has not been finalised yet and the list of qualified persons posted on the DCA's website ([www.dca.gov.uk](http://www.dca.gov.uk)) should be checked. The AoC will be pursuing this issue with the relevant government department and will issue a further briefing to confirm the position.

### **Reasonable opinion**

In exercising their "reasonable opinion" the Principal must be objective and make his decision based on evidence. His opinion must be within the range of reasonable opinions and should not be based on irrelevant material nor without consideration of all the relevant facts.

### **The Public Interest Test**

If the Principal believes that disclosure of the information would prejudice the aspects outlined above, then the public interest test must also be applied.

### **Note**

The "reasonable opinion" test does not apply to statistical information. This means that it has to be clearly shown that disclosure of statistical information would have a prejudicial effect.

The exemption and the public interest tests would also need to be separately considered in connection with confirming or denying whether the requested information is held.

## **Part 6: The Qualified Exemptions**

### **(4) Section 42, Legal professional privilege**

**Key provisions: FOIA Section 42**

**Key guidance: AG 4**

This provides an exemption from disclosure for information that is subject to legal professional privilege. In general this is the College's communication with its lawyers. This is subject to the public interest test.

### **How the exemption operates**

Legal professional privilege is by governed common law. Set out below are the general principles regarding legal professional privilege:

- a. Legal professional privilege attaches to all solicitor/client communications relating to a matter in which the solicitor has been instructed for the purpose of obtaining legal advice
- b. However, there is some legal uncertainty surrounding what constitutes solicitor/client communications. One would naturally assume that where an institution instructs a solicitor any communications between the solicitors and any member of that institution would attract legal professional privilege. This is not the case. Under current law, where particular individuals within an institution have been given authority to instruct solicitors it is regarded that only those individuals will be considered as the client. Thus, documents prepared by other employees of the institution even for the purpose of being shown to the solicitors, may not attract legal professional privilege
- c. Once legal professional privilege has been waived in respect of certain information, it is not possible to rely upon it later.

It is important to note that this is a complicated area of law and legal advice may need to be sought in determining whether legal professional privilege attaches to the information.

Once it has been established that legal professional privilege applies, the public authority must consider whether it is in the public interest to disclose the information in any event. It has been observed by the Lord Chancellor that it is likely that the public interest will fall in favour of upholding legal professional privilege.

### **The duty to confirm and deny**

The duty to confirm or deny does not arise if to do so would disclose information which is legally professionally privileged. Remember that this is also subject to the public interest test.

## **Part 6 : The Qualified Exemptions**

### **(5) Section 43, Trade secrets and commercial interests**

**Key provisions: FOIA section 43**

**Key guidance: AG 5**

#### **What does this exemption cover?**

The exemption applies to:

- a. Trade secrets; and
- b. Information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person.

This exemption is a qualified exemption. The College will also need to consider the public interest test (see **Part 6 (1)**).

#### **When does information amount to a “trade secret”?**

The term “trade secret” is not found in the Act. However, it is generally understood to mean information which:

- a. Is used in business
- b. Is not generally known
- c. Has economic value from not being generally known; and
- d. Is subject to reasonable efforts to maintain its secrecy.

More generally, the type of information that is considered a trade secret is the secret information which gives a business its “competitive edge”.

“Trade secrets” may include information that the College holds relating to other bodies with which the College contracts to obtain goods and services.

There is likely to be an overlap between information provided to the College in confidence (see **Part 5(5)**) and “trade secrets”.

If information requested does amount to a trade secret, there is no need for the College to decide whether release of the information would damage a third party’s commercial interests. However, the College will still need to apply the public interest test before deciding whether to disclose the information (See **Part 6 (1)**).

### **Commercial interests**

If information does not amount to a “trade secret”, the College should consider whether its disclosure might prejudice the commercial interests of the College or any third party.

The purpose of the exemption is to protect those that carry out business if disclosure of requested information would prejudice their ability to carry out their commercial activities. Therefore a commercial interest relates to a person’s ability to successfully participate in a commercial activity. Examples may include buying and selling goods or services. Indeed, in appropriate circumstances, it is arguable that the provision of courses is a commercial activity.

Although the College will, clearly, have a number of commercial interests in respect of its relationships, it is far more likely that the commercial interests of third parties will be prejudiced than those of the College. Therefore, it is **essential** that the College consults with relevant third parties when applying this exemption, although the final decision as to whether to disclose the information or not **is always with the College**.

The types of information which the College may have and the disclosure of which may prejudice the commercial interest of any party include:

- a. Information provided by potential suppliers during tendering processes (including information in unsuccessful bids)
- b. Information contained in contracts with (and reports and letters relating to) suppliers to the College; and

This sort of information may be subject to the exemption but, in applying the exemption, the College first has to consider whether the release of that information would prejudice someone's commercial interests and then has to apply the public interest test (see **Part 6 (1)**).

### **The prejudice test**

The test is whether the release of the information would, *or would be likely to*, harm someone's commercial interests.

It is not possible to make a definitive statement as to whether the release of any general type of information would prejudice anyone's commercial interests. This will depend upon all the circumstances of the case and the time when the disclosure is to be made. For example, pricing information submitted by a contractor is likely to be commercially sensitive during the tendering process but may not be a commercially sensitive once the contract has been awarded.

The issues to consider when applying the prejudice test include:

#### ***Does the information relate to a commercial activity?***

This is discussed above.

#### ***Is that commercial activity conducted in a competitive environment?***

The greater the dominance that a company enjoys in its relevant market, the less likely it is that disclosing the information will have a prejudicial impact on the company.

#### ***Would disclosure of the information lead to damage to reputation or business confidence?***

The release of certain information by the College may damage a company's reputation or the confidence that customers, suppliers or investors may have in that company. The release of information may have a significant impact on a company's ability to obtain supplies or secure finance or may cause industrial unrest at that company. However, the exemption would only apply where there is real risk of genuine damage being caused, rather than a risk of embarrassment.

#### ***Whose commercial interests are affected?***

The College will need to consider this. Release of certain information could prejudice the College's bargaining position. However, the disclosure of other information may, as is more likely, prejudice the commercial interests of the College's suppliers.

#### ***What is the likelihood of prejudice being caused?***

This will be a matter of judgement for the College.

### **Public interest test**

The College must not forget that, even if information amounts to a trade secret, or disclosure of information would prejudice the commercial interests of any person, the College still has to apply the public interest test before finally deciding whether to disclose the information (see **Part 6 (1)**).

## **The public interest and commercially sensitive information**

The College should remember:

- a. The question of whether information is commercially sensitive is often a matter of timing – in many situations, the public interest may favour delaying the release of commercially sensitive information rather than withholding the information completely; and
- b. The public interest will often favour the release of commercially sensitive information because there is a clear public interest in accountability in the spending of public money (therefore, the College may be able to release “big picture” information about its spending whilst withholding details of pricing structures, profit margins etc (to the extent that the College holds that information)). In the context of contracts with the private sector, the risk of the College being sued for disclosing commercially sensitive information is a factor against disclosure.

## **The duty to confirm or deny**

Even where the College can rely on the commercial interests exemption to protect a trade secret, the College must still confirm or deny whether it holds a trade secret. The College will need to consider separately whether it must confirm or deny whether it holds commercial information.

## **Part 7: Refusal Notices**

**Key provisions: FOIA sections 1 and 17**

**Key guidance: Access Code part VI**

In the event that the College relies on either an absolute or qualified exemption to avoid:

- a. Confirming or denying that it holds the information requested; and/or
- b. Disclosing the information

The College must serve on the applicant a notice:

- a. Stating the fact that, in the College’s opinion, the information requested is covered by one or more exemption(s)
- b. Specifying the exemption(s) relied upon; and
- c. Stating the reasons why the College believes the exemptions apply.

It must be remembered that these aspects must be set out separately for each duty.

Similar notices have to be served where the College refuses a request which it believes to be vexatious or repeated (see **Part 2**) or where the cost of complying with the request would exceed the appropriate limit (see **Part 4**)

The refusal notices must also be accompanied by a “complaints notice” (see **Part 8**).

## **Part 8 : Complaints**

### **Freedom of Information Complaints Procedure**

The College is required to have a procedure for dealing with complaints both in respect of its handling of requests for information and in respect of its publication scheme. The complaints procedure should allow for a fair and thorough review of the way in which the College handles requests for information and of decisions taken by the College pursuant to the FOIA, including decisions relating to the application of exemptions and the public interest test.

Key features that the College’s complaints procedure should include:

- a. Complaints should be acknowledged promptly and the complainant should be given the College’s target date for determining the complaint
- b. The review should be undertaken by someone more senior than the person who took the original decision
- c. The review should involve a full re-evaluation of the case

- d. Where the outcome of the review is that the information originally requested should now be disclosed, this should happen as soon as practicable and the applicant should be informed when this will be;
- e. Where the outcome of the review is that the College's procedures have not been properly followed, the College should apologise to the applicant and take steps to avoid similar errors in the future.

The College is also required to publish its target times for determining complaints and information relating to its success in meeting those targets.

### **Complaints Notice**

Wherever the College serves a "refusal notice" on an applicant it must also serve on the applicant a "complaints notice" setting out details of:

- a. The College's freedom of information complaints procedure; and
- b. The applicant's right to complain to the Information Commissioner.

For administrative purposes, the "complaints notice" could be a pre-printed standard form.

Although not strictly required by the FOIA or the Access Code, best practice would also be to serve a "complaints notice" on an applicant whenever, having received further details of the information requested, the College still feels that it does not have sufficient details to identify or collate the information requested.



**Information Request Form  
Freedom of Information Act 2000**

**Information Request Form: Please use this form to request access to commercial information about USP College.**

**Your Rights: Freedom of Information**

Any person has the right to request information about the College and a right to be provided with a copy of that information within a period of 20 working days, subject to certain exemptions.

If you would like to request access to College information, please complete this form carefully. The Freedom of Information Act 2000 provides that in certain circumstances USP College may decide not to provide you with some information, for example if the information is commercially sensitive or where it is available elsewhere and is accessible to the public. If the information is already available, the College will endeavour to direct you to the appropriate source.

**Fee**

USP College may make a charge to cover the costs involved in the administration of your request. This may be up to a maximum of £10.00 per request, however upon receipt of your request you will be notified of and required to pay any applicable charge prior to the disclosure of any information. A schedule of charges for information that the College proactively makes available to the public can be obtained from the College's Publication Scheme, which is available on the College website. Where the charge is applied, payment should be by cheque and payable to 'USP College'. Postal orders will not be accepted.

When you have completed this form please send it to:

FOIA Officer  
USP College – Seevic Campus  
Runnymede Chase  
Benfleet  
Essex  
SS7 1TW  
Email: foia@uspcollege.ac.uk

**Section 1. About Yourself (Please use block capitals and black ink)**

Data Protection Statement

The information that you provide on this form will be used for the purpose of processing information request. It will not be passed to any third party.

Title (Mr, Mrs, Miss, Ms, Dr, Rev etc): .....

Surname/ Family Name: .....

First Name(s): .....

Maiden/Former Name(s): .....

Gender : .....

Date of Birth: .....

Home Address (Please include your postcode): .....

.....

(This is the address to which all replies will be sent)

Daytime Telephone Number: .....

Evening Telephone Number: .....

Email Address: .....

(These details will assist the College in processing your application in the event that we may need to contact you to discuss your application).

Previous Address (within the last two years): .....

.....

.....

Declaration (to be completed by the applicant):

The information which I have supplied in this application is correct.

Signature: ..... Date:.....

**Section 2. Confirmation of Fee Paid**

**Fee Paid:** Yes/ No                      **Amount:** £                      **Cheque / Cash (\*Please delete)**

Signature of Applicant: ..... Date: .....

Signature of Recipient: ..... Date: .....

**Section 3. Description of Information Requested**

To assist the College in accurately identifying the information you require, please provide details of the information you are requesting and the format in which you require it. The College will endeavour to provide the information in the format requested, however where that is not possible the information will be provided in the format that most closely matches. **Please be specific regarding dates and types of information you wish to have access to.** You may be contacted for clarification of your request or for further information required to identify the material you have requested.

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## Appendix 4

### The Exemptions

#### Qualified

- Information intended for future publication (s.22)
- National security (s.24) (This exemption should be read in conjunction with s.23 – “information supplied by, or relating to, bodies dealing with security matters”)
- Defence (s.26)
- International relations (s.27)
- Relations within the UK (s.28)
- The economy (s.29)
- Investigations and proceedings (s.30)
- Law enforcement (s.31)
- Audit functions (s.33)
- Formulation of government policy (s.35)
- Prejudice to effective conduct of public affairs (s.36)
- Communications with her Majesty (s.37)
- Health and safety (s.38)
- Some personal information (s.40)
- Legal professional privilege (s.42)
- Commercial interests (s.43)

#### Absolute

- Information accessible by other means (s.21)
- Information supplied by or relating to, bodies dealing with security matters (s.23)
- Court records (s.32)
- Parliamentary privilege (s.34)
- Personal information (s.40)
- Information provided in confidence (s.41)
- Information whose disclosure is prohibited by law (s.44)

## Equality and Diversity Statement & Impact Assessment

USP College is committed to equality of opportunity. The aim is to create an environment in which people treat each other with mutual respect, regardless of: age, disability, family responsibility, marital status, race, colour, ethnicity, nationality, religion or belief, gender, gender identity, transgender, sexual orientation, trade union activity or unrelated criminal convictions.

This form should be used by managers and policy owners within their area of responsibility to carry out Equality and Diversity Impact Assessments (EDIAs) in relation to protected characteristics including, but not limited to: Age, Disability, Gender reassignment, Marriage and civil partnership, Pregnancy and maternity, Race, Religion and belief, Sex, Sexual orientation. The word 'policy' is taken to include strategies, policies, procedures and guidance notes; both formal and informal, internal and external.

### 1. Name of Policy

Freedom of Information Policy

### 2. Which of the following groups could be affected by this policy?

*(Tick all that apply)*

<b>Students</b>	√
<b>Staff</b>	√
<b>Wider Community</b>	√

### 3. Complaints

Have complaints been received from anyone with one or more protected characteristic about the service provided? If yes then please give details.

N/A

### 4. The Impact

Four possible impacts should be considered as part of the assessment:

- a. **Positive Impact** - Where the policy might have a positive impact on a particular protected characteristic.
- b. **None or Little Impact** – Where you think a policy does not disadvantage any of the protected characteristics
- c. **Some Impact** – Where a policy might disadvantage any of the protected characteristics groups to some extent. This disadvantage may be also differential in the sense that where the negative impact on one particular group of individuals with protected characteristic is likely to be greater than on another.
- d. **Substantial Impact** – Where you think that the policy could have a negative impact on any or all of the protected characteristics. This disadvantage may be also differential in the sense that the negative impact on one particular protected characteristic is likely to be greater than on another.

Thought-provoking questions, which might help come to a decision about the impact of a policy on individuals with protected characteristics:

- e. Does policy outcomes and service take up differ between people with different protected characteristics?
- f. What key information do we have? Does data or engagement with people with protected characteristics give insights into areas of disadvantage, which relate to the policy area?
- g. If the policy is likely to have a negative impact on individuals, sharing particular characteristics what steps can be taken to mitigate these effects?
- h. Will the policy deliver practical benefits for certain groups?
- i. Does the policy miss opportunities to advance equality of opportunity and foster good understanding/relationships between groups?
- j. Do other policies need to change to make this policy more effective?
- k. Is there any elements of the policy that could be unlawful under the Equality Act 2010?

Use the guidance provided above and complete the following table: **(Please Tick ✓)**

<b>Gender/Age</b>	Positive Impact	No or Little Impact	Some Impact	Adverse	Substantial Adverse Impact
Gender		✓			
Age		✓			
<b>Disability</b>	Positive Impact	No or Little Impact	Some Impact	Adverse	Substantial Adverse Impact
Visually Impaired		✓			
Hearing impaired		✓			
Physical Disability		✓			
Specific Learning Difficulties		✓			
Global Learning Difficulties		✓			
Autistic Spectrum Disorder		✓			
Any other disability – Various		✓			
<b>Other Factors</b>	Positive Impact	No or Little Impact	Some Impact	Adverse	Substantial Adverse Impact
Race		✓			
Culture		✓			
Religious Belief		✓			
Sexual Orientation		✓			
Gender Reassignment		✓			
Marriage/Civil Partnership		✓			
Pregnancy /Maternity /Paternity		✓			

Please comment on any areas where some or substantial impact is indicated. Any resulting actions must be added to the below action plan.

**5. Is there anything that cannot be changed?**

What cannot be changed?	Can this be justified?	If so, how?
Not applicable		
E.g., Disabled people can be treated more favorably under the Disability Discrimination Act 2005. If a policy appears to treat disabled people more favorably than other equality groups, the disadvantage may be justifiable		

Please list the main actions that you plan to take as a result of this assessment in your area of responsibility. (Continue on separate sheets as necessary)

<p><b>Action Plan:</b></p>
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