

# Freedom of Information Process 2021-22

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## Introduction

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1. This policy focuses on the key points to consider when complying with a freedom of information request. Under the Freedom of Information Act 2000 (FIA 2000), Capel Manor College (the “College”), has an obligation to respond to a request for information made by any person, located anywhere in the world. Upon receipt of a valid request, we have a duty to confirm or deny in writing whether we hold the information requested unless specified exemption(s) apply.
2. This policy provides guidance for staff members on how freedom of information requests should be handled and is intended for internal use. This policy is not a privacy policy or statement, and is not to be made routinely available to third parties.
3. This policy applies to all staff but much of it is aimed primarily at those members of staff who are authorised to handle freedom of information requests. These sections are identified by the words ‘(authorised staff)’ appearing in the section title. For other staff members, it provides guidance on what to do if you receive a freedom of information request (see paragraph 2 below).
4. Failure to comply with a freedom of information request puts the College at potentially significant risk, and so the College takes compliance with this policy very seriously.
5. We will review and update this policy in accordance with our obligations. It does not form part of any employee’s contract of employment and we may amend, update or supplement it from time to time. We will circulate any new or modified policy to staff when it is adopted.
6. If you have any questions regarding this policy, please contact the Data Protection Officer.

## What to do when you receive a freedom of information request (all staff)

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7. If you receive a freedom of information request and you are not authorised to handle such a request, you must immediately take the steps set out in paragraphs 9 (request received by email) or 10 (request received by letter). There are limited timescales within which we must respond to a request and any delay could result in our failing to meet these timescales, which could lead to enforcement action by the Information Commissioner’s Office (ICO) and/or legal action by the applicant.
8. For information on what amounts to a freedom of information request, see paragraph 1 above. If you are in any way unsure as to whether a request for information is a freedom of information request, please contact the Data Protection Officer.
9. If you receive a freedom of information request by email or in any other written form except letter, including through social networking sites like Twitter or Facebook, you must immediately forward the request to the Data Protection Officer at this email address: [dataprotection@capel.ac.uk](mailto:dataprotection@capel.ac.uk).
10. If you receive a freedom of information request by letter or fax you must, immediately:
  - a) scan the letter;
  - b) send the original to the Data Protection Officer by internal post; and
  - c) send a scanned copy of the letter to this email address: [dataprotection@capel.ac.uk](mailto:dataprotection@capel.ac.uk).
11. If you receive a freedom of information request by telephone, ask the individual making the request to do so in writing, either in a letter or by email.

You will receive confirmation when the request has been received by the Data Protection Officer. If you do not receive such confirmation within two working days of sending it, you should contact the Data Protection Officer to confirm safe receipt.

12. You must not take any other action in relation to the freedom of information request unless the Data Protection Officer has authorised you to do so in advance and in writing.

## What to do when responding to a freedom of information request? (authorised staff)

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13. The timeframe for compliance is 20 working days, although in certain limited circumstances this can be extended. Upon receipt of a request, you should:
- a) record the date on which the request was received
  - b) assess the validity of the request
  - c) establish whether information of the description specified in the request is held by the College
  - d) estimate the cost of compliance
  - e) consider charging a fee
  - f) consider whether any exemptions apply
14. The College may need not disclose the requested information if:
- a) the cost of doing so would exceed the appropriate limit, which is set by regulation
  - b) the request is repeated or vexatious, or
  - c) an exemption applies
15. However, at all times when dealing with a request, we should act according to the duty to provide such advice and assistance as would be reasonable to expect.

## College duty to provide advice and assistance (authorised staff)

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16. When dealing with a request, you must act according to the duty to provide advice and assistance so far as it would be reasonable to expect. This should be borne in mind when handling any request, even one which is invalid or where an exemption applies. The Information Commissioner's Office (ICO) regards compliance with the [Section 45 Code of Practice](#) and [Section 45 Code of Practice \(Datasets\)](#) as satisfying this duty and in particular the College will:
- a) respond to an applicant quickly and keep them informed of the progress of their request in a manner that is appropriate to the applicant's circumstances
  - b) record all communications relating to a request
  - c) if the information cannot either be provided in the manner requested by the applicant or be provided at all by virtue of an exemption, provide further advice or assistance to the applicant as appropriate.
17. When complying with a request, we are under a duty to confirm or deny in writing whether or not we hold information of the type specified in the request and if that is the case we are under a duty to communicate that information to the applicant, unless specified exemption(s) apply.

## How to assess the validity of a request (authorised staff)

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18. In order to be valid, requests need not be in any particular format, although they do need to:
- be in writing
  - state the applicant's name and address for correspondence
  - include a description of the information requested
19. Requests can be in electronic form. Those submitted by email or through social networking sites are valid as long as they are legible, contain the applicant's real name and are capable of being used for subsequent reference.
20. Where a request does not meet these requirements, you should request further information from the applicant so as to meet our obligation under the general duty to provide advice or assistance. Where you have reasonably required further information in order to identify and locate the information requested and you have informed the applicant of this, you need not comply with the request until such information is provided.

## Timeframe for compliance with a request (authorised staff)

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21. The College will address a request promptly and, in any event, have only 20 working days to comply with a request. This time limit starts on the first working day after a request is received and for these purposes a request is 'received' when it is delivered to the College or if sent by email, delivered to the inbox of a member of staff at the College.
22. If further details are reasonably required to locate or identify the requested information, the College must request such additional details from the applicant promptly, and the timeframe for compliance shall not start until we have received sufficient information for us to deal with the request.
23. During the 20 working day time period the College will:
- issue the applicant a written fee notice, specifying the fees for dealing with the request
  - confirm or deny whether we hold the requested information, and if appropriate supply it (unless specific exemption(s) apply)
  - issue the applicant a refusal notice, specifying that their request has been refused and which exemption applies with reasons.
24. Where the College is charging a fee, the request will be dealt with within the 20 working day timeframe for compliance. However, the time limit is suspended while we wait to receive the fee. If the fee is not paid within three months from the date on which the fee notice is given to the applicant then you need not process the request any further. If the fee is paid, the countdown continues and you must comply with the request within the time remaining out of the 20 working days timeframe.
25. Once the College receives a fee the time limit left to comply with the request does not include the day on which the fee notice was given and the day on which the fees are received. For these purposes, the fees are received once they have been 'paid' and so for cheques this means when they have been cleared.
26. Where a qualified exemption may apply, you must consider the application of a public interest test. In such circumstances, you may take additional time to comply with the request and so the 20 working day time limit can be extended to a 'reasonable time'. A refusal notice, detailing which qualified exemption is being considered and offering an estimate of when the College expects to respond further, must still be sent within 20 working days, after which the applicant should be kept informed of any progress.

27. If relying on an extension, we must be prepared to justify our reasons to the Information Commissioner so that the time taken to respond to the request should be seen as 'reasonable in the circumstances'.
28. In certain circumstances set out by regulation, the time limit for compliance may be extended up to a maximum of 60 working days. Such circumstances include:
  - a) where a request is received during school holidays; or
  - b) where the requested information has been archived, the time limit is extended to 30 working days

## Establishing if the information is held (authorised staff)

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29. The information must be held by the College including information which is held by another person on behalf of the College, but excludes that information which is held on behalf of another person.
30. When establishing whether the information is held, check relevant records, such as files, archives, indexes and directories. Such information may include copies of information, and need not be the original, and where multiple copies have been distributed to the College and potentially other authorities.
31. Information may be requested in different forms, such as copies of original documents, electronic formats, or the inspection of records. It is not necessary to create new information in order to answer a request, even if this can easily be done from other information that is held.
32. Consultation should be carried out where appropriate and handled to short and planned timeframes. You should bear in mind that releasing (or withholding) information could have wider implications. If the information to be disclosed is contentious, relevant staff may need to be briefed and consulted.
33. It is important to establish whether a duty of confidence applies to any of the information. If so, it may be necessary to ask the third party to whom the duty is owed if they consent to release the information.

## Estimating fees (authorised staff)

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34. Upon receipt of a request the College will carry out a fee estimate. An exact calculation is not necessary, but the estimate should be sensible and reasonable, taking into account the costs of determining whether the College holds the information as well as locating, retrieving or extracting it. Such costs will often be set out in terms of the costs of staff time, and when assessing this, the College will charge £25 per hour, per staff member regardless of the actual cost charged or rate of pay.
35. When providing an estimate, the cost of analysing the request for any exemptions that may apply and the costs of redacting exempt information cannot be included.

## Charging fees (authorised staff)

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36. The College may charge a fee for complying with a request. The maximum amount which can be charged is set at an 'appropriate limit' by regulation and is £450.
37. There is no obligation for the College to charge for dealing with a request. If we opt to charge, you must send a fee notice to the applicant within the timeframe for compliance.
38. Where the costs of complying with a request do not exceed the appropriate limit, the College may charge for the costs it reasonably expects to incur in relation to:
  - a) informing the applicant whether or not it holds the information, and
  - b) communicating that information to the applicant

39. The fees regulations (SI 2004/3244) specify that this includes, but is not limited to, the costs of:
- a) complying with an applicant's request for a response to be in particular format
  - b) reproducing any document that contains the requested information (this includes photocopying and printing costs), and
  - c) sending the information to the applicant (e.g postage costs)
40. The College will charge for the cost of redacting exempt information, including the cost of materials or use of specialist equipment.
41. Where the costs of complying with a request do not exceed the appropriate limit, the College will not charge for staff time. This means that the College will not charge for the staff time taken to consider whether an exemption applies or redacting any exempt information. The College will not charge for providing the information in a particular format when under a statutory obligation to do so.
42. The College may charge a fee for making a relevant copyright dataset available for re-use under FIA 2000. The total fee shall not exceed the sum of:
- a) the cost of its collection, production, reproduction and dissemination of the relevant copyright work
  - b) a reasonable return on investment
43. The Re-use of Public Sector Information Regulations 2015, SI 2015/1415 (2015 Regulations) came into force on 18 July 2015 replacing the Re-use of Public Sector Information Regulations 2005, SI 2005/1515. For datasets covered by the 2015 Regulations, re-use of those datasets (or parts of datasets) will be governed by the 2015 Regulations and not by FIA 2000.
44. Where the costs of complying with a request would exceed the appropriate limit, the College will charge for:
- a) those costs which may be taken into account when estimating whether the appropriate limit is exceeded
  - b) communicating with the applicant including those costs it reasonably expects to incur in:
    - i. informing the applicant whether or not it holds the information, and
    - ii. communicating that information to the applicant
    - iii. staff time spent communicating the requested information
45. The fees regulations (SI 2004/3244) specify that the cost of communicating information can include:
- a) complying with an applicant's request for a response to be in particular format
  - b) reproducing any document that contains the requested information (this includes photocopying and printing costs), and
  - c) sending the information to the applicant (e.g postage costs)
46. Where the costs of complying with a request exceed the appropriate limit, the College will also charge for staff time taken communicating the information to the applicant. The College, and redacting exempt information. Such time is charged at a flat rate of £25 per hour.
47. Other costs, related to redacting exempt information, such as the cost of materials or use of specialist equipment may also be charged.
48. The College will not charge for providing information in a particular format where it is under a statutory obligation to do so.

## Exceptions (authorised staff)

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49. The College may not comply with a request if:
- a) the cost would exceed the appropriate limit
  - b) the request is repeated or vexatious, or
  - c) an exemption applies
50. Where the estimated cost of complying with a request exceeds the appropriate limit the College may not comply. However, in such circumstances unless the cost associated with the duty to confirm or deny alone exceeds the limit, the College will acknowledge whether it holds the information.
51. Where the College is not obliged to provide the information to the applicant the College will, in accordance with paragraph 14 of the [Section 45 Code of Practice](#) will respond to the applicant to:
- a) indicate what could be provided within the limit, or
  - b) advise how the applicant might narrow the scope of their request so that it would fall within the limit
52. The College will not comply with a vexatious request. The term 'vexatious' is not defined by the Act, but instead carries its ordinary meaning. When deciding if a request is vexatious, the College will consider the context and history of the request and whether it:
- a) could fairly be seen as obsessive
  - b) causes any harassment or distress to the College's staff
  - c) imposes a significant burden on the College
  - d) is designed to cause disruption or annoyance, and
  - e) is without any serious purpose or value
53. When assessing the above, the College will consider its position in regard to more than one of these categories. For these purposes harassment has not been defined by the Act or in the Information Commissioner's guidance, but this should be given its ordinary meaning of 'to disturb persistently, bother continually, pester or persecute'.
54. Where the College has previously complied with a request for information, which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current one.
55. The College will consider the information which will be subject to the request when assessing whether it is repeated, as identical wording may return different information depending on when a request was made. The College will consider a request to be substantially similar only when the College would be disclosing virtually the same information with no meaningful differences from that which was previously disclosed.
56. When assessing whether or not a reasonable interval has passed between identical or substantially similar requests the College will consider if the information is likely to have changed, how often the relevant records are updated and any previous advice that may have been given to the applicant.
57. The College will adhere to the exemptions set out in [Part II](#) of the FIA 2000 such exemptions apply both to the duty to confirm or deny and the duty to communicate the information to the applicant, while others apply only to the latter. Exemptions fall into the following two categories:



<b>Absolute exemptions</b>	<b>Qualified exemptions subject to the public interest test</b>
Information reasonably accessible to applicant by other means	Information intended for future publication
Information supplied by, or relating to, security bodies	Information relating to national security
Information contained in court records	Information relating to defence
Information that if disclosed would breach Parliamentary privilege	Information relating to international relations
Information that if disclosed would prejudice the effective conduct of public affairs	Information relating to relations within the UK
Communications with the Royal Family	Information relating to the economy
Information which is personal information	Investigations and proceedings by public authorities
Information provided in confidence	Information relating to law enforcement
Information whose disclosure is specifically prohibited	Information relating to audit functions
	Information relating to policy formulation and ministerial communications
	Information relating to the effective conduct of public affairs
	Communications with the Royal Family and Honours
	Health and safety
	Environmental information
	Information which is personal information
	Information covered by legal professional privilege
	Trade secrets and commercial interests

58. Documents may contain both information which is to be disclosed as well as information to which an exemption applies. If sections of a document are exempt, these will be redacted and the remainder of the document will be released.

59. In such cases it will be made clear to the applicant that certain sections have been removed, and each redaction must be justified on the basis of a particular exemption. If a document is rendered incomprehensible as a result of redactions then the College will reformat the information so that it can be understood.

## Refusing a request (authorised staff)

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60. When the College cannot comply with a request for information, the Data Protection Officer will issue a refusal notice and ensure that it will:

- a) be in writing
- b) be issued as soon as possible but in any event within the 20 working day timeframe for dealing with a request
- c) state the fact that the request has been refused, and
- d) clearly explain the College's reasoning for withholding the information



61. Where an exemption applies the refusal notice will also:

- a) specify all the exemptions that apply, with reference to the relevant sections and subsections of FIA 2000
- b) provide the College's full reasoning behind the decision, including:
  - i. for those exemptions subject to the prejudice test (i.e. those which relate to information which if disclosed would, or would be likely to, cause prejudice) will be specified the likely harm which would result from complying with the request
  - ii. for those qualified exemptions subject to the public interest test, why it is in the public interest to withhold the information

62. In those circumstances where the College does not need to confirm or deny whether it holds information of the type specified in a request, because doing so would result in the disclosure of exempt information, the Data Protection Officer will issue a refusal notice that explains why an exemption applies and why the duty to confirm or deny is exempt.

63. If the College has already refused a request from an applicant on the grounds that it was vexatious or repeated, the College will not issue another such notice.

## Consequences of failing to comply with this policy (all staff)

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64. The College takes compliance with this policy very seriously. If we fail to comply with a freedom of information request, or fail to provide access to all the information requested, or fail to respond within the time period, we will be in breach of legislation.

65. Because of the importance of this policy, an employee's failure to comply with any requirement of it may lead to disciplinary action under our procedures, and this action may result in dismissal for gross misconduct. If a non-employee breaches this policy, they may have their contract terminated with immediate effect.

## Contacts and responsibilities (all staff)

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66. This policy will be regularly reviewed by the Data Protection Officer.

67. Any questions regarding this policy should be addressed to the Data Protection Officer.