

Freedom of Information Policy

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Policy Statement

The Office of the Children's Commissioner [OCC] is committed to complying with the provisions of the Freedom of Information Act 2000 and any related legislation, which is, applicable. This policy applies to all the information the OCC holds – that is all information created, received, and maintained by the OCC staff in the course of their work.

FOIA enables anyone to request any recorded information held by, or on behalf of, the OCC. FOI enquiries may be received from anyone from anywhere; an applicant does not have to be a UK citizen nor a UK resident to request information from a UK public authority. There is no need for the applicant to explain their reasons for the request, or that it is a request under the FOIA. FOI requests must be in written form and must include the name and address (postal or email) of the applicant and details of the information requested.

Information will be provided if it is held, unless one or more of the exemptions listed in the legislation applies. Information, which is exempt, does not have to be provided.

Relationship with other policies

This policy has been written within the context of other policies, processes, guidelines and information standards:

- Data Protection policy
- Complaints policy

Compliance with this policy will facilitate compliance with other information related legislation, notable the Data Protection Act 2018

Environmental Information Regulations 1992 (EIR), amended in 1998 and further amended in 2004, will continue to apply.

Responsibilities

OCC has a responsibility to make its information available in accordance with the FOIA and EIR.

OCC's Senior Management Team has overall responsibility for this policy. OCC's SIRO is responsible for ensuring implementation and compliance with this policy.

However, all the OCC staff, whether or not they create, receive or maintain information, has responsibilities under the FOIA.

Staff must ensure that any request that they receive for information, whether specifically under Freedom of Information or not, is handled in compliance with this policy.

Compliance with this policy is compulsory for all staff employed by the OCC. A member of staff who fails to comply with the policy may be subject to disciplinary action. It is the responsibility of Line Managers to ensure that their members of staff are made aware of the existence and content of this policy.

Dealing with requests

The FOIA provides public access to information held by public authorities as:

- public authorities are obliged to publish certain information about their activities, and
- members of the public are entitled to request information from public authorities.

Recorded information held by the OCC is subject to the requirements of the FOIA. The type of information, which may be requested, can be paper or electronic and may include draft documents, agendas, minutes, emails, diaries and even rough handwritten notes.

FOI requests must be in written form and must include the name and address (postal or email) of the applicant and details of the information they request.

If requests are made by telephone, and as part of the duty to assist, staff should help members of the public in refining their information request. It would not be unreasonable to record this in writing and send it to the applicant for authorisation. This then becomes an FOI enquiry when returned to the OCC.

All requests must be dealt with promptly and in line with this policy.

Because the OCC must respond to FOI enquiries within 20 working days of receiving a request, it is essential that staff ensure that their various modes of correspondence are managed in their absence when on leave, sickness or away on business. Absence from the office does not override the duty to assist under the FOIA.

If a request is unclear, the OCC will ask for clarification as soon as possible to enable us to proceed with considering the request. The OCC will provide advice and assistance to help people make requests under the FOIA.

We will aim to respond to all requests promptly and in any event within 20 working days following receipt of a valid request. The applicant will be informed if it is not possible to comply with this timescale and given an indication of when the response is likely to be provided.

Where a valid request is received, there is a duty on the OCC to confirm or deny whether it holds the information and if it does hold it, to provide the information so long as an exemption does not apply. If information has been requested but is not held, we will inform the applicant of this. In exceptional cases the OCC may not be able to either confirm or deny if the information requested is held.

Where Qualified Exemptions apply, the initial response to the applicant (issued within 20 working days) must state how long the public interest test will take.

If the information requested is not subject to any exemptions, OCC has a duty to deliver this to the applicant in the format requested, [we may charge a fee for this service].

OCC's SIRO [or another member of the Senior Management Team], will 'sign off' all FOIs and SARs, except those being processed by the Business Services team. These will normally be 'signed off' by the Head of Business Services.

Record Management

Good records management practices should assist staff to meet their duties under the Act. If records are easy to locate, for example, then requests can be dealt with quickly.

FOI Records Management will include the full logging of all FOI and other information requests.

Exemptions

The FOIA does not entitle applicants to be given all information held by the OCC.

The FOIA sets out exemptions from the right of access to information. In broad terms, there are two kinds of exemptions:

- Absolute exemptions – the right to information is completely over-ridden by the exemption.
- Qualified exemptions – where, having carefully considered any competing interests to decide whether it serves the interests of the public better to withhold or disclose the information, an exemption may be applied, This is known as the [public interest test](#).

Although there might be occasions when it is appropriate to rely on an exemption, we aim to disclose as much information as possible and rely on exemptions only in limited circumstances.

Where a request is refused, we will explain which section of FOIA we have relied upon and in most instances, we explain the reasons for the decision, including the details of any public interest and prejudice tests. We will also outline the complaints procedure with relevant details and inform the requester of their right to complain to the Information Commissioner.

Data Protection Act 2018

The OCC is under a legal duty to protect personal data as required by the Data Protection Act 2018 (DPA) and other privacy legislation. It will carefully consider its responsibilities under the DPA before disclosing any personal data about living individuals. If the information that has been requested would reveal information about a living person then the OCC will consider the public interest in disclosure and

whether permission should be sought from the individual concerned prior to disclosure. In deciding whether to refuse a request on this basis, we will consider whether it would be unfair to the individual concerned to disclose their personal data. Such situations may occur when the information requested could be combined with other data to which the requestor has access to reveal new information about that person. If responding to a request under the FOIA would breach the DPA, it may be exempt from disclosure. Any request made by an individual for their own personal data will be treated as a Subject Access Request under the Data Protection Act 2018.

[See Appendix 1: Subject Access Requests].

Vexatious requests

While we are committed to providing information, we sometimes receive requests which can be deemed 'vexatious'. Some of these requests can be costly for public bodies such as the OCC to handle and responding to them may be an inappropriate use of staff time. In determining whether a request may be vexatious, we will consider whether it is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation. Where we believe the request to be vexatious, we will issue a refusal notice unless we have already done so in response to an earlier vexatious or repeated request from the same individual, and it would be unreasonable to issue another one.

Repeated requests

OCC can refuse requests if they are repeated, whether or not they are also vexatious. Each request will be considered on its own merits.

Confidentiality

If we receive information from someone else and complying with a request for that information would be a breach of confidence that is actionable, the information may be exempt from disclosure.

Cost limit

OCC reserves the right to refuse requests where the cost of providing the information would exceed the statutory cost limit. This limit is currently £450, which equates to 18 hours' work at a statutory rate of £25 per hour.

https://ico.org.uk/media/fororganisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf.

OCC will only take into account the staff costs that the organisation reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

OCC is not allowed to include:

- the estimated cost of staff time taken in deciding whether any exemptions apply to the disclosure of information requested.
- the staff time taken, or likely to be taken, in removing any exempt information in order to leave the information that is to be disclosed, often referred to as 'redaction', cannot be included as part of the costs of extracting the requested information.

Other exemptions

There are also other exemptions that we might apply, these include:

- Information already reasonably accessible;
 - Commercial interests;
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- Legal professional privilege;
- Parliamentary privilege;
- Audit functions.

OCC will also not disclose information if complying with a request for information:

- is not allowed under law;
- would be contrary to an obligation under EU law, or
- would constitute contempt of court.

Further guidance on exemptions can be found on the Information Commissioner's website:
<https://ico.org.uk/>

Charges

Information provided in response to requests will be provided electronically, subject to reasonable adjustments and will be free of charge where possible. The OCC may need to charge in some circumstances, for example, where the costs are significant. In such cases, OCC will notify the applicant in advance.

We will follow Information Commissioner's Office (ICO) guidance on charges.

Publication scheme

The OCC has adopted the Information Commissioner's Model Publication Scheme. The Scheme sets out what information OCC will make available, classified by type of information and how this information can be accessed.

The Scheme can be accessed using the following link to our website:
<https://www.childrenscommissioner.gov.uk/report/publications-scheme/>

Complaints

Anyone who has made a request for information to the OCC under the FOIA is entitled to request an internal review if they are unhappy with the way their request has been handled. Requests for an internal review must be received within 40 working days of the date of the OCC's final response to their request.

All requests for an internal review should be logged, immediately acknowledged in writing, with a more detailed response sent out following an internal review.

The aim of the review is to ensure that the requester has been treated fairly under the provisions of the Act and that any exemptions have been properly applied. This appeal procedure may also be used if the requester thinks we have taken too long to reply or does not agree with the cost threshold being applied or that procedures have not been correctly followed. The review should be impartial and independent. It is acceptable for the review to consider additional public interest factors, or to bring new exemptions into play. If it does, however, these should be fully documented in the review report.

Where it is thought that the original decision was incorrect and the information (or part of it) should have been released, or that the response time delay was due to poor administration, this should be discussed with the staff who carried out or authorised the original response. OCC should aim to respond to the request for an internal review within 20 working days of receipt of the request.

Anyone who is unhappy with the outcome of an internal review is entitled to complain to the ICO.

Appeals to the Information Commissioner

The Information Commissioner may become involved if the requester remains unhappy and information on how to complain to the ICO should be included in the response.

Full contact details are available on the ICO web site: <https://ico.org.uk/>

Contact details

Email: info.request@childrenscommissioner.gov.uk

Office of the Children's Commissioner

Sanctuary Buildings

Great Smith Street

London SW1 3BT

Appendix 1: Subject Access Requests

A subject access request is a written request for personal information (known as personal data) held about you by OCC.

Data protection legislation gives individuals the right to know what information is held about them. However, this right is subject to certain exemptions.

When OCC receives a subject access request, we will first check that we have enough information to be sure of your identity. Often, we will have no reason to doubt a person's identity, for example, if we have regularly corresponded with them. However, if we have good cause to doubt your identity, we can ask you to provide any evidence we reasonably need to confirm your identity.

We will gather any manual or electronically held information (including emails) and identify any information provided by a third party or which identifies a third party. If we have identified information that relates to third parties, we will write to them asking whether there is any reason why this information should not be disclosed.

We do not have to supply the information to you unless the other party has provided their consent, or it is reasonable to do so without their consent. If the third party objects to the information, being disclosed we might seek legal advice on what we should do.

We will deal with your subject access request without undue delay and in any event within one month of receipt of your request. However, if the work involved is particularly complex or if numerous requests are made then we may extend this period by up to two additional months. In this case, we will inform you about the extension and explain the reasons.

We will not charge a fee for dealing with your request unless it is manifestly unfounded or excessive. If we charge a fee, we will inform you of this and explain the reasons for doing so.

We will explain what steps have been taken in dealing with your request i.e. we will set out the source of your personal information we have gathered. The information will be provided in a concise, transparent and easily accessible form. It may be provided in writing, or by other means, including, where appropriate, by electronic means.

There are a number of exemptions to our duty to disclose personal data and we may seek legal advice if we consider that they might apply. An example of an exemption is information covered by legal professional privilege. If we agree that the information is inaccurate, we will correct it and where practicable, destroy the inaccurate information. If we do not agree or feel unable to decide whether the information is inaccurate, we will make a note of the alleged error and keep this on file.

If you are not satisfied by our actions, you can seek recourse through our complaints procedure.

If you remain dissatisfied, you have the right to refer the matter to the Information Commissioner or seek recourse through the courts.

The Information Commissioner: www.ico.org.uk

If you would like to know more or have any concerns about how your personal data is being processed please contact OCC's The Data Protection Officer.



**Sanctuary Buildings, 20 Great Smith
Street London, SW1P 3BT**

020 7783 8330

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