Freedom of Information Policy
Freedom of Information

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1. Introduction

The Freedom of Information Act 2000 (FOIA) imposes a number of obligations on the Children’s Commissioner and provides the public with a general right of access to information held by the Children’s Commissioner’s Office subject to certain exemptions.

From 1st June 2006 members of the public have the statutory right to request all information held by the Children’s Commissioner’s Office, regardless of when it was created, by whom, or the form in which it is now recorded. Again, this is subject to certain exemptions outlined in the FOIA, as well as the Acts of Parliament and Statutory Instruments relating to the Children’s Commissioner, in particular, The Children’s Act 2004 and Children and Families Act 2014.

2. Scope of the policy

This policy applies to all the information the Children’s Commissioner holds – that is all information created, received and maintained by the Children’s Commissioner’s staff in the course of their work.

Information can be held in all types of media, including paper records, microfiche, audio and video cassettes, CDs and DVDs, and a variety of computer files. Much of the information held by the Children’s Commissioner’s Office is electronic and paper format.

3. Relationship with other policies and processes

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

- Data Protection policy and procedure
- Complaints policy and procedure

Compliance with this policy will facilitate compliance with other information related legislation, notable the Data Protection Act 1998 (DPA 1998).

4. FOI and Data Protection

The DPA gives certain rights to individuals by protecting information that is held about them. Any ‘data controller’ that processes personal data must comply with the data protection principles which sets out how personal data may be processed (insert hyperlink to app c). Individuals have the right to make a subject access request to see the personal data held about them and to receive a copy of that information.
From 1st January 2005, with the implementation of the FOIA’s general right of access, a request made by an individual for information about themselves will be exempt under the FOIA and will continue to be handled under the DPA 1998.

An individual who makes a subject access request should be provided with the information requested (subject to certain exemptions), including information in unstructured files. Individuals requiring access to unstructured data must describe the information so that the Children’s Commissioner’s office can locate it.

If an applicant makes a request for information about another living individual, this will be handled under the FOIA, but certain data protection considerations will still apply. A public authority will not have to provide the information if the disclosure would breach the data protection principles i.e. would be unfair to the other individual/third party.

The Children’s Commissioner may decide that it is reasonable in all the circumstances to disclose the third party’s personal information, or if unclear then it may seek consent and if so then it should normally take account of their wishes.

A subject access request under the DPA must be dealt with no longer than 40 calendar days from receipt of the request; an FOI request must be dealt with no longer than 20 working days from receipt of the request.

5. FOI and other information initiatives

Environmental Information Regulations 1992 (EIR), amended in 1998 and further amended in 2004, will continue to apply. These give rights of access to environmental information held by public authorities. Almost every public authority will hold some environmental information and so should be aware of the rules for handling request for such information. A request for environmental information does not have to be in writing and can be made orally. The Children’s Commissioner has to respond to the request within 20 days (40 days in the case of complicated requests). A reasonable charge can be made for the information. Exceptions exist in relation to some EIR information and Exemptions for some FOI information. Both EIR and FOI give certain rights to access information held by public authorities but, as with the DPA, public authorities will have a duty to identify the nature of an information request and respond accordingly.

6. Responsibilities

The Children’s Commissioner has a responsibility to make its information available in accordance with the FOIA and EIR. Responsibility for ensuring compliance with this policy lies with the Audit & Risk Committee.

The Head of Business Services has day-to-day responsibilities for co-ordinating the organisation’s Freedom of Information and EIR Function. These responsibilities include maintaining FOI and EIR guidelines and raising staff awareness of their FOI and EIR responsibilities, ensuring best practice in records management, updating the FOI/ EIR Publication Scheme and promoting compliance with all facets of FOI legislation. All of
the Children’s Commissioner’s staff, whether or not they create, receive or maintain
information, has responsibilities under the FOIA and EIR. Sections 16 and 45 of the
FOIA and regulations 9 of EIR identify a duty to assist which has been further developed
in the Lord Chancellor’s Code of Practice on the Discharge of Public Authorities’
Functions, under Part I of the Freedom of Information Act 2000, issued under section 45
of the Act (see www.foi.gov.uk/codepafunc.htm).
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. Staff
should note that:

1. Even though the Children’s Commissioner has an officer detailed with receiving
and assigning, through a workflow process, FOI requests to content owners, such
requests may be received by any member of staff at any time. Staff must
therefore follow rigorous processes when they are not in the office (see Section
7).

2. Staff may need to seek advice from the Business Adviser (HR) in order to
distinguish between FOI, DPA, EIR and other information enquiries.

3. FOI enquiries may be received from anyone anywhere; an applicant does not
have to be a UK citizen nor a UK resident to request information from a UK
public authority.

4. The Children’s Commissioner must respond to FOI requests within 20 working
days of receiving a request.

5. Certain request for information will be subject to exemptions (FOI) and
exceptions (EIR) which will determine whether the Children’s Commissioner’s
Office must ‘neither confirm nor deny that they hold the information requested.’

6. 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.

7. If the information requested is not subject to any exemptions, the Children’s
Commissioner has a duty to deliver this to the applicant in the format
requested. The Children’s Commissioner’s Office may charge a fee for this
service.

8. The Information Commissioner’s Office provides guidance on dealing with
vexatious requests: https://ico.org.uk/for-organisations/guide-to-freedom-of-
information/refusing-a-request/#7

9. FOI requests must be in written form (including electronic formats such as fax
and email) and must include the name and address of the applicant and details
of the information they request. Occasionally, staff will have to correspond with
the applicant in order to refine their information request.

10. Information enquiries may be made by telephone and, as part of the duty to
assist; staff should help members of the public in refining their information

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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 Office of the Children’s Commissioner.

11. Information enquiries may be received in foreign languages or in Braille. The duty to assist may again apply in the case of translation, whereas the availability of services to the disabled would fall under the jurisdiction of the Disability Discrimination Act 1995 (DDA). The rights of the individual under the Human Rights Act 1998 may also have to be taken into consideration.

12. The Children’s Commissioner’s Office has a duty to inform third parties that the organisation is subject to the FOIA. The email disclaimer that is appended to all external correspondence should include information to this effect.

13. Compliance with this policy is compulsory for all staff employed by the Children’s Commissioner. 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.

7. Out of office procedure

Because the Children’s Commissioner must respond to FOI enquiries within 20 working days of receipt of information requests, it is essential that staff ensure that their various modes of correspondence are managed in their absence when on leave, sick or away on business. Absence from the office does not override the duty to assist under the FOIA.

Traditional mail should be opened by colleagues to determine whether it contains FOI, DPA, EIR or other information requests.

Email and voicemail should be monitored for the same reason. This does raise information governance issues relating to security: if personal passwords and pin numbers are shared with a colleague, these must be changed when the absent member of staff returns to the office.

When staff know they are going to be out of the office for more than a day, they should ensure that they use an out-of-office assistant on their email, directing correspondents to a colleague and FOI applicants to the following email address: Info.REQUEST@childrenscommissioner.gsi.gov.uk. Similarly, voicemail messages should redirect callers.

8. Records management

Good records management practices should assist the Children’s Commissioner’s 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. Such logs will include correspondence from and to applicants, details of information provided to the applicant, fees charged and complaints management.

9. Complaints Procedure

Complaints received in respect of the processing of FOI requests will be reviewed by the Children’s Commissioner. All complaints should be logged and associated with the relevant request.

Complaints should be immediately acknowledged in writing, with more detailed response sent out following the review by the Children’s Commissioner which should not take longer than 20 working days after initial receipt of the complaint.

The aim of the review is to ensure that the enquirer 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 enquirer 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, the Commissioner should discuss this with the staff who carried out or authorised the original response. The response must explain which exemption is relevant with any additional explanation which might be helpful. The enquirer must be informed of the right to complain further to the ICO.

Contacting the enquirer about the outcome should be provided within a "reasonable time" from the date of the receipt of the request for a review – this in practice should be as soon as possible and certainly no later 20 working days.

Appeal to the Information Commissioner

The Information Commissioner may become involved if the enquirer remains unhappy and information on how to complain to the ICO should be included in the response. The Commissioner’s procedures for investigating complaints may include full access to all relevant papers and records, particularly why withheld information – mark up exemptions/scope.

The Information Commissioner can determine that we have complied with the Act or that further action is needed to comply such as making the information available because exemptions were not correctly applied or that administrative arrangements need to be tightened up where the response time was over the 20 working days. This requirement
will be set out in a Decision Notice or an Enforcement Notice and failure to comply could result in a referral to the High Court as a contempt of court.

However, both the enquirer and the children’s Commissioner have a right of appeal against the Information Commissioner’s decisions and these appeals are heard at an Information Tribunal.

Full contact details are available on the ICO web site:

https://ico.org.uk/

In the event of a complaint being processed, relevant records should not be destroyed, even if scheduled for disposal, until the time allocated to appeal a decision from the Information Tribunal has expired.
Appendix A – The Children’s Commissioner’s Publication Scheme

The Children’s Commissioner’s Publication Scheme is regularly reviewed and updated and has been made available to the public on the Children’s Commissioner’s website: www.childrenscommissioner.gov.uk

Adopting a Publication Scheme is a requirement of section 19 of the FOIA. As a first step towards promoting greater openness and accountability across the public sector, all public authorities have been required to make information available through, and publish information in accordance with these schemes. All schemes must specify:

1. classes of information by which the scheme is organised;
2. the format in which information in each class has been or will be published;
3. the details of any charges for making the information available to the public.

Publication Schemes must be kept up to date and must be approved by the Information Commissioner. Any changes to classes must be approved by the Commissioner. However, information within classes can be changed without seeking approval. The Publication Scheme must be re-submitted to the Commissioner for approval every four years.

Appendix B – FOI Exemptions

A number of exemptions are identified in the FOIA. These fall into two categories: Qualified exemptions, where it is necessary to determine whether disclosure of information would be in the public interest, and Absolute exemptions, where the public interest test does not apply.

The following lists the exemptions together with the relevant section of the FOIA. Further guidance on the exemptions can be found on the Information Commissioner’s website: https://ico.org.uk/

B.1 Exemptions where the public interest test applies

s22 Information intended for future publication
s24 National security
s26 Defence A
s27 International relations
s28 Relations within the United Kingdom
s29 The economy
s30 Investigations and proceedings conducted by public authorities
s31 Law enforcement
s33 Audit functions
s35 Formulation of Government policy
s36 Prejudice to effective conduct of public affairs (except information held by the House of Commons or House of Lords)

Communications with Her Majesty, etc., and honours

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Appendix C – Environmental Information Regulations: Exceptions

The Regulations give people a right of access to information about the activities of public authorities that relate to or affect the environment, unless there is good reason for them not to have the information. This is sometimes referred to as a presumption in favour of disclosure.

The Environmental Information Regulations state exceptions that allow you to refuse to provide requested information.

The following lists the exemptions and further guidance can be found on the Information Commissioner’s website: https://ico.org.uk/

• Regulation 12(4)(a) Information not held – please see ‘Holding information’ below.
• Regulation 12(4)(b): Manifestly unreasonable requests
• Regulation 12(4)(c): Requests formulated in too general a manner
• Regulation 12(4)(d): Material in the course of completion, unfinished documents and incomplete data
• Regulation 12(4)(e): Internal communications
• Regulation 12(5)(a): International relations, defence, national security or public safety
• Regulation 12(5)(b): The course of justice and inquiries exception
• Regulation 12(5)(c): Intellectual property rights

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• Regulation 12(5)(d): Confidentiality of proceedings
• Regulation 12(5)(e): Confidentiality of commercial or industrial information
• Regulation 12(5)(f): Interests of the person who provided the information to the public authority
• Regulation 12(5)(g): Protection of the environment
• Regulation 12(9): Information on emissions
• Regulation 13: personal information

Appendix D – Data protection principles

The Data Protection Act 1998 identifies 8 principles. These state that data must be:

1. fairly and lawfully processed;
2. processed for limited purposes;
3. adequate, relevant and not excessive;
4. accurate;
5. not kept for longer than is necessary;
6. processed inline with your rights;
7. secure;
8. not transferred to countries without adequate protection.

The FOIA has further impacted on the DPA in two significant ways:

1. Both Acts are now enforced by the same person, the Information Commissioner.

Appendix E – FOI request workflow

The management of FOI requests needs to follow a formal process. Consideration has to be given to the following issues:

1. Is this an FOI or other information request?
2. Will a fee be charged for processing this request?
3. Do any exemptions apply to the information requested?
4. Is the organisation obliged to confirm or deny whether it holds the information requested?

Appended is a chart that provides an overview of an FOI request workflow process.
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