MANCHESTER 1824
The University of Manchester

Freedom of Information

Standard Operating Procedure and Guidance for Staff

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Standard Operating Procedure for processing of Freedom of Information Requests

1. If a Freedom of Information (FOI) request (which should be in writing and state clearly what information is required and include a name and contact details) is received by any staff member / team within the University, then this should be forwarded to mtrsfoia@manchester.ac.uk immediately. You can find out more about FOI requests here.
2. The Information Rights (IR) team within the Information Governance Office (IGO) deals with FOI requests. When a request is received it is first checked:
    i. to ensure that it qualifies as a FOI request under the law
    ii. to see whether the requested information has already been published
    iii. to see whether the request should be handled as 'business as usual'
    iv. to see whether the request is clear or whether it needs clarification
3. Requests received the previous day will be dealt with expeditiously each morning. Requests will be dealt with in the order they are received. Requests are logged on to the OneTrust system and acknowledged.
4. The information owner/s for the requested information are identified. The IR team maintains a spreadsheet of contacts within directorates, faculties, and schools to whom FOI requests may be sent. The FOI request is sent with summary guidance identifying:
    i. The fact that an 18 hour 'appropriate limit' applies, and that exemptions may apply, and that the IR team can provide further guidance on this as needed
    ii. A proposed response date, which will usually be 10 working days from receipt of the request.
    iii. A link to this document
5. Under the Freedom of Information Act (FOIA) legislation, the University has 20 working days to respond to a request. Requesting the information by the 'half-way point' allows for any discussion of issues or exemptions which may be needed as well as workload balancing. If there are likely to be any problems meeting the deadline the IR team should be notified as soon as possible. If the IR Team identifies any additional considerations in relation to a request they will raise these at the time of sending the request to the information owner.
6. Responses to FOI requests should be "applicant- and purpose- blind" which means that it is irrelevant who has asked the question or how they plan to use the information. For this reason the name of the requester will not be attached to the request. Once information has been released to one requester then it is considered to have been released to the world and can be used for any legal purpose. If you do have any questions about this you can contact the IR team.
7. To minimize risk it is advisable that the IR team are provided with one or more contacts by information owner to whom FOI requests will be sent. This may be e.g., to one or more team members for specific purposes, or to a generic mailbox. This can assist in timely allocation of requests bearing in mind legal time limits, prevent requests from going astray, and allow for a basic level of familiarity / expertise to be developed.

8. The contact receiving the FOI request on behalf of the faculty, school or directorate will be responsible for allocating the request to be processed. It is suggested that the IR team are copied into emails referring the request to be updated as to progress in case there is any need to contact the person processing the request.

9. If a request contains elements which need to be allocated to multiple faculties, schools or directorates then the IR team will identify which divisions are being asked to respond. Information and supporting data sent to the IR team in response to part of a request should be authorised in the usual way. If at any point the request is transferred from one faculty, school or directorate to another then the IR team should be copied in and it should be stated which division will provide and authorise the information and any supporting data.

10. It may be the case that requested information falls obviously within the ownership of a particular team and so the request will be referred to that team. However, there may be aspects of the request which would not be known to that team. Therefore, a good practice may be to share a summary of the request with staff in one or more relevant roles across the faculty / school / directorate to note any additional considerations, which may include:

    i. identification of any additional party who should be consulted or advised in relation to the request, and

    ii. discussion of whether any clarification, exemptions etc. may be required.

11. As part of our obligation to assist requesters, we should answer the specific question which has been asked. If a request has more than one possible likely interpretation, clarification may be requested, by the Information Rights team, from the person or organisation who has submitted the FOI request. This request should be raised as soon as possible after receipt so as not to unduly delay the response over all. When a clarification request is made “the clock stops” until such time as clarification is received.

12. The first question when planning to collect the requested information is whether this information is held by the University. If the information is not held at all then it cannot be provided and this should be the response. The University is not required to create information which does not already exist. *E.g., if a meeting took place and notes from the meeting were requested but none exist then it is not necessary to write notes about the meeting to fulfil the request.*

13. If the information is held in a reportable format then we are required to report on it. *E.g., if we can run a report on annual footfall from a database then we should run this in response to the request, even if we have not previously run this report. We may also collate multiple information sources into a report.*

14. A supporting data set may relate to individuals and their characteristics, so that small numbers could potentially identify an individual and their personal data (either directly or in combination with other data which may be / may have been disclosed). In this case, University practice is to present any numbers less than 5 as <5. To a reasonable extent any assumptions which are made in reporting on datasets should be made explicit.

15. Enquirers may ask for information and supporting data to be presented within a particular format (e.g. an Excel spreadsheet) or in a particular way (e.g. within a table provided). As part of our duty to assist requesters we should comply with these requests if it is reasonably practicable to do so. For further guidance specific requests can be discussed with the IR team.

16. Any member of staff may send the response to the FOI request (or the relevant part of the request) to the IR team. However, when the information and any supporting data is received by the IR team it should contain, or be accompanied by, authorisation by an appropriate person (see Appendix 2 for a proforma for use in providing authorisation).

17. The information owner should advise the IR team of which member/s of staff may authorise the release of information by their faculty, school, or directorate. In the event of staff or roles changing the IR team should be advised of this within a reasonable period.

18. The key elements of authorisation are to check:

    1. Is the information accurate?
    2. Is the information sufficient but not excessive to answer the request?
    3. Is supporting data in correct format (e.g. a more secure format such as PDF) for release?
    4. Have any additional considerations been fully addressed?

19. On receiving responses in relation to an FOI request, the IR team will:

    a. Check that the response has been authorised by a named authoriser
    b. Review the response and raise any questions or matters arising
    c. Draw up a response making use of the responses provided
    d. Share the response for review by any relevant departments
    e. Send out the response
    f. Log the sent response on OneTrust

Further Guidance on Handling of Freedom of Information Requests

S12 and the 'reasonable time limit' of 18 hours

As part of the University's obligations to respond to FOI requests it is expected that resources across the institution will be allocated to gathering the information needed for the response, up to an "appropriate limit". If reporting on the information will take more than 18 hours, then the University can refuse the request on these grounds. The 18-hour period does not include the time it would take to discuss and then apply exemptions, or to redact the information. The limit applies to the whole request, so for instance if a request has multiple questions within it, and responding to one would take over 18 hours, then we can legally refuse the entire request. The Information Rights (IR) team may refer to this as "applying Section 12" of the FOIA.

In support of a S12 refusal a brief explanation must be provided noting which activities would be required to collate the report and why this would take over 18 hours. A simple way to demonstrate this is to provide a calculation to show the time involved. For example, if you would need to manually check 500 files to obtain the information from within them, then at a conservative estimate of 5 minutes per file this would take over 41 hours to complete. You can find further information within the Information Commissioner's Office (ICO) Guidance on Section 12 here.

Exemptions

The spirit of the FOIA is one of transparency of public sector organisations and as such the University should seek to provide requested information in good faith as a default. There are however circumstances when the legislation provides that information may be withheld. The FOIA legislation lists 25 exemptions ranging from national security, law enforcement, to parliamentary privilege and legal professional privilege. Not all of these will be relevant in a university setting; we have included a summary of the exemptions most used by The University of Manchester at Appendix 1.

Absolute and qualified exemptions

Exemptions broadly fall into two categories: absolute; and qualified. In the case of a qualified exemption, it is not sufficient to assert that the exemption applies. The University needs to set out a case including arguments on a public interest test. There may need to be consultations internally and externally to the University. The information owner or their nominee, as subject matter expert, will necessarily need to contribute to the development of these arguments although the IR team will assist with guidance as to application, and drafting of the response.

Prejudice and likelihood clauses

Many exemptions also include a prejudice clause and a likelihood clause. An example would be the commercial prejudice exemption which states that release of information would be "likely to prejudice the commercial interests of any party". In applying this exemption, we would need to demonstrate what form the stated prejudice would take and what the likelihood of that prejudice occurring is (likelihood meaning a high probability not just "could"). These tests may also involve internal consultation or consultation with a third party.

Blanket exemptions

The combination of the public interest test, likelihood test and prejudice test means that it is impossible to justify blanket applications of exemptions (for example "we will never release a

particular type of information as it will always be commercially confidential"). We will always be expected to take note of the circumstances of each request before applying an exemption.

Refuse to confirm or deny

In addition to these exemptions (which would generally result in confirming that information is held but refusing to disclose it) there is also guidance about when the University can refuse to confirm or deny whether we hold the requested information.

Refusing a request: S16 advice and assistance

If the University refuses a request, then we are legally obliged to provide advice and assistance to the requester to help them bring their request under the limit. This requirement is often known as "Section 16 advice". It is likely to be the information owner or their nominee who will need to provide this advice to be included with the refusal.

For example, if we have refused a request because collecting the information would take more than 18 hours, often the simplest advice will be to reduce the timeframe e.g. from 5 years to 1 year or change the parameters of the request e.g. to a particular area of the university, faculty/school or directorate, rather than the whole. However sometimes it will be useful to provide some additional context which will enable the requester to understand how they could re-frame or re-direct their enquiry either to the University or another organisation.

Publication

If information has already been placed in the public domain (including through our website) and is currently accessible, then enquirers can be directed to this. With a view to reducing the number of requests which need to be processed and in accordance with the spirit of transparency information owners should review requests which are received and consider whether additional information may be published to assist future enquirers. Consideration should be particularly given to the publication of information which is subject to repeated or regular requests.

Vexatious Requests

Under section 14(1) of FOIA a "vexatious" request may be refused. The ICO has determined that the ordinary dictionary definition of the word vexatious is only of limited use in deciding whether a request is vexatious. Taking all the circumstances into account, a balanced judgement should be made as to whether on the one hand the fulfilment of the request will cause a disproportionate or unjustified level of disruption, irritation or distress, and on the other that there is no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. It is the request, which is vexatious not the requester, although context may well be relevant. Please consult the IR Team if you feel that a request may be vexatious.

For further information and guidance

Further information about Freedom of Information is also available on our StaffNet pages. For further guidance which is not addressed by this document please contact the IR team by email at mtrsfoi@manchester.ac.uk.

Appendix 1: Exemptions

Some exemptions which have been applied by the University in the past are set out below. It is important to note that these notes provide a summary overview only. Legislation, additional guidance, and judgements by the ICO will need to be referred to and the IR team can assist with this.

Section 21 – Information accessible by other means

I know that this information is available online so do I still have to provide it to respond to this request?

In short, no. However, you must be sure that the information online fully addresses the question posed in the FOI request. If you are sure this is the case, please provide the IR team with the relevant link to where the information can be found, and we will apply this exemption. You can find some further information within the ICO guidance on this exemption here.

Section 22 – Information intended for future publication

This information is due to be published so do I still have to provide it to respond to this request?

In short, no. To apply this exemption, there must be an intent to publish the information at the time the request is received, within a reasonable time frame. We do not need to have an exact publication date, however if you think this exemption is relevant and you do know when the date is, please just advise us accordingly. You can find some further information within the ICO guidance on this exemption here.

Section 22A – Research

The information that has been requested will undermine my research project which is currently ongoing – are we still required to provide it?

Information obtained in the course of, or derived from, a programme of research is exempt information IF the programme is continuing with a view to the publication, and disclosure before the date of publication would, or would be likely to, prejudice either the programme itself or the interests of anyone involved in the programme. The key is that there must be an intent to publish the results or outcomes of the project in any form. If you think this is the case with your request, then you will need to provide the Information Rights team with some quite clear advice and direction regarding exactly how you believe the programme or interests would be, or would be likely to be, prejudiced by disclosure of the requested information. The more information you can provide the better, as this will make the argument we are required to put together when responding much stronger and less subject to challenge. You can find some further information within the ICO guidance on this exemption here.

Section 40 – Personal data

I have been asked to provide some supporting data however some of the numbers within it are very low and I am concerned that people might be identifiable from them – do we still need to provide this?

We often receive requests for statistical data in relation to either staff or students where particular breakdowns will reveal small numbers in some areas. Staff responding to the request rightly have concerns that this may make people identifiable. If these circumstances apply to your request, we encourage you to provide the data as it is, along with an explanation of where you think this may apply. There are certain things the IR team will consider when looking to apply this exemption, to determine

firstly if people are genuinely identifiable or only identifiable to people already in possession of other information not available to the public (e.g. other staff who work in the same area). From there, we will also consider even if they are identifiable, whether disclosure would be unfair, for the exemption to apply. If we think following this process that the information should not be disclosed, we may, in conjunction with you, request changes to how the data is presented to ensure this is no longer the case. You can find some further information within the ICO guidance on this exemption here.

I'm concerned that just refusing the request will show that such information does exist

It could be the case that if the University either refuses a request or states that we do not hold the requested information then this could disclose, by inference, whether such information does exist or not. In the case where the personal data of someone, other than the requester, would be disclosed then we can refuse to confirm or deny whether we hold the information. You can find some further information within the ICO guidance on this exemption here.

Section 43 – Commercial interests

My information is commercially sensitive, and I don't think we should be providing it

A common concern relates to whether information, which the university is asked to release, may be commercially *sensitive*. However the exemption available under the FOIA is in relation to commercial *interests* which are different to commercial sensitivity. To assist staff we have broken this exemption down further below. You can find some further information within the ICO guidance on this exemption here.

What are commercial interests?

The fact that the information relates to a commercial activity, or a contract is not sufficient on its own. There must be a likely impact or detriment, referred to as 'prejudice,' to either our own commercial interests or those of anybody we might be working with i.e. the prejudice must be to our/their commercial position vis-à-vis our/their competitors. For example, would releasing the information provide competitors with key information that would then enable them to undercut us / the competition thus prejudicing our position in a commercial environment? Whose commercial interests are involved? The prejudice could be to either our interests, or those of anyone else we might be working with e.g. a company we have a contract with. However, if we are only citing the interests of a third party, then the ICO expects us to have sought the views of that company, rather than speculatively believing that will be the case.

I have been asked to provide contract or tender details and I think these should be exempt – what do I need to do?

If you think the commercial interests of a company we are working with would be affected by the disclosure then first we need to look at the contract as some, particularly newer ones, should contain a clause where the company will have stipulated their views on disclosure under the FOIA. If there is not such a clause, then we will need to consult with the company to obtain their views. You can either do this yourselves, or the Information Governance Office can contact them for you. They need to be given a clear deadline to respond by (as we still need to respond within 20 working days to the requester) and it must be made clear that they need to stipulate exactly how their commercial interests are affected and if appropriate, highlight the sections of the contract that they consider release of would prejudice their commercial interests. This exemption is unlikely to apply to the whole of the contract as many contain some quite generic information which would not engage the exemption. A copy of the requested information should also be supplied to the Information

Governance Office so they can review the information and see where they believe the exemption might apply.

Appendix 2: Authorisation proforma

Dear Information Rights Team,

In response to your request:

[Please delete / amend the following as appropriate]

1 Please find the necessary information appended / attached. This has been reviewed and:

- I confirm the information is accurate
- I confirm the information is sufficient but not excessive to answer the request (or the part of the request directed to us)
- I confirm that any supporting data is in an appropriate format for release (usually PDF) and contains no additional data, links to data etc. which should not be released (e.g. in hidden rows or Pivot Tables in Excel). If there are any questions about the format for release these have been addressed and resolved with the Information Rights team to our satisfaction.
- I confirm that any additional considerations such as e.g. Legal Advice required by us, guidance on exemptions or S12 have been addressed and resolved with the Information Rights team to our satisfaction.

AND / OR

2 In support of the refusal of all, or part of, this request:

- Under S12
- Under Exemptions/s [X]

as agreed previously, please find our explanation / rationale appended / attached.

AND IF RELEVANT

3 We are providing additional context or explanation for the data:

- For your benefit – should not be shared with the requester
- Can be shared with the requester

AND IF RELEVANT

4 We require that you share the final response with us for approval prior to sending out and authorisation is subject to having this final opportunity to review

AUTHORISATION

Authorised by: [Authoriser name]

Appendix 3: How to create a PDF

Install an appropriate software, such as Adobe Acrobat Reader, from the Software Centre / Company Portal

https://manchester.saasiteu.com/Modules/SelfService/#knowledgeBase/view/19D08D7414AE4D85998B2F 79EC4C4B99

Version and Document Control

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