

St Monica's Catholic Primary School Freedom of Information Policy

"Strive to succeed in the presence of God"

Together as a Catholic community **Everyone** – children, parents, staff and parish, **Achieves** in their own unique way and strives to be **More** like Jesus

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1. Introduction

St Monica's School is committed to full compliance with the Freedom of Information Act 2000 and its underlying principles of accountability and the general right of access to information, subject to legal exemptions. This Policy sets out our arrangements for making information readily available and for responding to requests made under the Act.

2. Background

The Freedom of Information Act 2000 (FoIA) came fully into force on January 1 2005. Under the FoIA, any person has a legal right to ask for access to information held by the School and, subject to certain exemptions, be given such access.

The information which the School routinely makes available to the public is included in the Publication Scheme at Appendix 1. Requests for other information are dealt with in accordance with the relevant FoIA provisions. While the Act is based on an assumption of openness, it recognises that it is appropriate to withhold certain information from disclosure. Exemptions are defined in the Act to protect such information.

The FoIA is fully retrospective and covers any records created before 2005 and still held by the School. All records are maintained in accordance with the Retention Schedule issued by the DfES. **It is an offence wilfully to conceal, damage or destroy information in order to**

avoid responding to a request, so it is important that no records relevant to a request are amended or destroyed.

Requests under the FoIA can be addressed to anyone in the School so all staff need to be aware of the procedure for dealing with requests. Requests must be made in writing (which may include e.mail) and should include the enquirer's name and correspondence address and specify what information is being requested. Enquirers do not have to mention the Act, nor do they have to say why they want the information. There is a duty to respond to all requests, telling the enquirer whether or not the information is held, and supplying any information that is held, unless there is a relevant exemption. A response must be made within twenty days of receipt of the request, excluding days on which the School is closed. .

[For further information and guidance, see the DfES "Freedom of Information Act 2000 – A Guide for Maintained Schools on Full Implementation from January 2005." This can be found on [Teachernet](#), under Freedom of Information in the A-Z of School Leadership.]

3. Scope

The FoIA joins the Data Protection Act and the Environmental Information Regulations as legislation under which anyone is entitled to request information from the School.

Requests for personal data are still covered by the Data Protection Act (DPA). Individuals can make a Subject Access request for information about them which is held by the School.

Requests for information about anything relating to the environment – such as air, water, land, the natural world or the built environment and any factor or measure affecting these – are covered by the Environmental Information Regulations (EIR). Also covered are requests for information on health and safety. For example, queries about chemicals used in the school or on school land, phone masts and car parks would all be covered by the EIR. Requests under the EIR are dealt with in the same way as those under the FoIA but, unlike FoIA, they need not be written and can be verbal.

If any element of a request to the School concerns personal or environmental information, that element must be dealt with under the DPA or EIR. Any other information is a request under the FoIA and must be dealt with accordingly.

4. Obligations and Duties

The School recognises its duty to

- provide advice and assistance to anyone requesting information; and
- tell enquirers whether or not we hold the information they are requesting (the duty to confirm or deny), and provide access to the information we hold in accordance with the procedures laid down in Appendix 1.

5. Publication Scheme

The School's Publication Scheme (Appendix 1) is based on the Model Scheme approved by the Information Commissioner.

6. Dealing with Requests

We shall respond to all requests in accordance with the procedures laid down in Annex 2. We shall ensure that all staff are aware of the procedures. *[Note: A Powerpoint presentation is available on [Teachernet](#) to help in raising awareness. It can be found under Freedom of Information on the A-Z of School Leadership]*

7. Exemptions

Certain information is subject to absolute or qualified exemptions and may be withheld from disclosure. The exemptions are listed in Appendix 3.

8. Public Interest Test

When we judge a qualified exemption to be applicable, we shall also apply the public interest test procedures (see Appendix 4) to determine whether public interest in exempting the information from disclosure outweighs the public interest in disclosure.

We shall maintain a register of requests to which we have responded wholly or in part by withholding information. The register shall include the reason for withholding the information.

9. Charging

We reserve the right to refuse to supply information where the cost of doing so exceeds the statutory maximum.

When the cost of supplying the information does not exceed the statutory maximum, we may charge the direct costs (eg printing, photocopying and postage) but, in conformity with the provisions of FOIA, not the cost of staff time. (Paragraphs 17 to 22 of appendix 2 explain how costs are calculated.)

We shall inform anyone requesting information of the relevant fee before supplying the information.

10. Responsibilities

All members of staff are responsible for informing the School Administration Manager when they receive a request for information which is not included in the Publication Scheme. The Administration Manager will log all requests and immediately inform the Headteacher who will then be responsible for ensuring that the request is considered and an appropriate response sent out within the statutory timescale.

11. Complaints

Any complaints will be dealt with according to the School's normal complaints procedure.

We shall aim to respond to all complaints within twenty working days of receipt. We shall maintain records of all complaints and their outcome.

If, after investigation, the original decision is upheld, we shall inform the complainant of their right to appeal to the Information Commissioner's Office.

See also

- **FOI Policy Progress map 1**
- **FOI Policy Progress map 2**

1. WHAT IS THIS PUBLICATION SCHEME FOR?

The Freedom of Information Act 2000 (FOIA) requires any maintained school to maintain a publication scheme setting out:

- (i) information held by the school which falls within the seven classes below;
- (ii) how the information is made available; and
- (iii) a schedule of any fees charged.

2. CLASSES OF INFORMATION**Who we are and what we do.**

Organizational information, locations and contacts, constitutional and legal governance.

What we spend and how we spend it.

Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.

What our priorities are and how we are doing.

Strategy and performance information, plans, assessments, inspections and reviews.

How we make decisions.

Policy proposals and decisions, decision-making processes, internal criteria and procedures, consultations.

Our policies and procedures.

Current written protocols for delivering our functions and responsibilities.

Lists and registers.

Information held in registers required by law and other lists and registers relating to our functions.

The services we offer.

Advice and guidance, booklets and leaflets, transactions and media releases.

The table at Annex 1 sets out the specific items of information held within each of these classes.

Information whose disclosure is prohibited by law, eg personal data covered by the Data Protection Act, is not included within this publication scheme.

Other information may be requested under the FOIA and will be made available unless exempt from disclosure in accordance with the relevant provisions of the FOIA.

3. HOW INFORMATION IS MADE AVAILABLE

As far as possible, the School publishes the information covered by this scheme on its website.

Where it is impracticable to make information available in that way, it can be provided in hard copy on request to the school office (address: Cannon Road, Southgate, London, N14 7HE; email: office@st-monicas.enfield.sch.uk; tel: 020 8886 4647; fax: 020 8882 8424)

Those wishing simply to view information at the school may request an appointment to do so and, as far as is reasonably practicable, arrangements will be made.

Annex 1 indicates how specific items of information are currently made available.

4. CHARGES

It is the purpose of the scheme to make as much information as possible readily available at minimum inconvenience and cost to the public. Charges may, however, be made to cover the costs of photocopying and postage. These will vary; the rates current at March 2014 are set out in the following schedule.

Photocopying/printing (black & white) A4	0.8p per sheet
Photocopying/printing (black & white) A3	1.4p per sheet*
Photocopying/printing @ 1. ..p per sheet (colour) A4	0.8p per sheet
Photocopying/printing (black & white) A3	1.4p per sheet
Postage	Actual cost of Royal Mail standard 2 nd class

Information published	How it can be obtained
Class 5 – Our policies and procedures	
School policies including: <ul style="list-style-type: none"> • Charging and remissions policy • Health and Safety Policy • Complaints procedure • Staff conduct policy • Discipline and grievance policies • Information request handling policy • School Meal Debt Policy • Single Equality Policy and Plan 	On website Hard copy On website Hard copy Hard copy Hard copy On website On website Hard copy
Pupil and curriculum policies, including: <ul style="list-style-type: none"> • Assessment and Marking Policy • E-Safety Policy • Home-school agreement • Homework Policy • Curriculum Policy • Sex and relationship education Policy (SRE) • Special educational needs Policy • Teaching and Learning Policy • Access and Disability Policy • RE Policy, inc. Collective worship • Behaviour Policy inc. Pupil discipline 	On website On website Hard copy On website On website Hard copy On website On website Hard copy Hard copy On website
Records management and personal data policies, including: <ul style="list-style-type: none"> • Information security policies • Records retention destruction and archive policies • Data protection (including information sharing policies) 	Hard copy [Local Authority's Data Protection Policy (including Document Retention Schedule) and Privacy Notice]
Class 6 – Lists and Registers	
Curriculum circulars and statutory instruments	On DfES website
Asset register	Hard copy
Class 7 – The services we offer	
Extra-curricular activities (School Trips Policy)	Hard copy
Out-of-school clubs	On website

Further enquiries can be made via email office@st-monicas.enfield.sch.uk or by phone 02088864647

Appendix 2

ST MONICA'S CATHOLIC PRIMARY SCHOOL Procedure for Dealing with Requests

1. To handle a request for information, the Governing Body or delegated person will need to address a series of questions. **These are set out as process maps in separate documents**

Is it an FoI request for information?

2. A request for information may be covered by one, or all, of three information rights:
- Data Protection Act (DPA) enquiries (or subject access requests) are ones where the enquirer asks to see what personal information the school holds about the enquirer. If the enquiry is a Data Protection request, follow your existing school DPA guidance.
 - Environmental Information Regulations (EIR) enquiries are ones which relate to air, water, land, natural sites, built environment, flora and fauna, and health, and any decisions and activities affecting any of these. These could therefore include enquiries about recycling, phone masts, school playing fields, car parking etc.
 - FoI enquiries are concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the FoI Act. All requests for information that are not data protection or environmental information requests are covered by the FOI Act.

Is this a valid FOI request?

3. An FOI request should:
- be **in writing**, including email or fax;
 - **state the enquirer's name and correspondence address** (email addresses are allowed);
 - **describe the information requested** - there must be enough information to be able to identify and locate the information¹; and
 - not be covered by one the DPA or EIR.
4. Verbal enquiries are not covered by the FOI Act. Such enquiries can be dealt with if the enquiry is relatively straightforward but , for more complex enquiries, and to avoid disputes over what was asked for, the enquirer should be invited to put the request in writing; when received , it will become subject to FOI.

Does the School hold the information?

5. "Holding" information means information relating to the business of the school:
- the School has **created**, or
 - the School has **received from another** body or person, or
 - **held by another** body **on the School's behalf**.
6. Information means both hard copy and digital information, including email.
7. If the School does not hold the information, you do not have to create or acquire it just to answer the enquiry. A reasonable search should be made before denying that you have information the School might be expected to hold.

¹ In cases where the enquiry is ambiguous, assist the enquirer to describe more clearly the information requested. Where possible, establish direct contact. The aim is to clarify the nature of the information requested and not to determine the aims or motivation of the enquirer. If you notify the enquirer that you need further information to enable you to answer, you do not have to deal with the request until the further information is received. The response time limit starts from the date of receipt.

Has the information requested already been made public?

8. If the information requested is already in the public domain, eg through the School's Publication Scheme, explain to the enquirer how to gain access to it.

Is the request vexatious, manifestly unreasonable or repeated?

9. The Act states that there is no obligation to comply with vexatious requests. This is taken to mean a request which is designed to cause inconvenience, harassment or expense rather than to obtain information, and would require a substantial diversion of resources or would otherwise undermine the work of the School².

Can the School transfer a request to another body?

10. If the information is held by another public authority, such as the Local Authority, first check that it is held and then transfer the request. You must let the enquirer know that you do not hold the information and to whom you have transferred the request. You should answer any parts of the enquiry in respect of information the School does hold.

Could a third party's interests be affected by disclosure?

11. Consultation of third parties may be required if their interests could be affected by release of the information requested, and any such consultation may influence the decision. You do not need to consult where you are not going to disclose the information because you will be applying an exemption.

12. Consultation will be necessary where:

- disclosure of information may affect the legal rights of a third party, such as the right to have certain information treated in confidence or rights under Article 8 of the European Convention on Human Rights;
- the views of the third party may assist you to determine if information is exempt from disclosure; or
- the views of the third party may assist you to determine the public interest.

Does an exemption apply?

13. The presumption of the legislation is that you will disclose information unless the Act provides a specific reason to withhold it. There are more than twenty exemptions. These are set out in Appendix 3 and are intended to protect sensitive or confidential information.

14. Only where you have real concerns about disclosing the information should you check whether an exemption may apply. Even then, if the relevant exemption is a qualified exemption, you need to apply the public interest test to identify whether the public interest in applying the exemption outweighs the public interest in disclosing it. Unless it is in the public interest to withhold the information, it has to be released. Appendix 4 contains guidance on the public interest test.

What if the request is for personal information?

15. Personal information requested by the subject of that information is exempt under the FOI Act as such information is covered by the Data Protection Act (DPA). Individuals must,

² It is not intended to include otherwise valid requests in which the applicant may make complaints or vent frustrations. In addition, you do not have to comply with repeated identical or substantially similar requests from the same applicant unless a "reasonable" interval has elapsed between requests.

therefore, continue to make a 'subject access request' under the DPA if they want access to such information.

What if the details contain personal information?

16. Personal information requested by third parties is also exempt under the FOI Act where release of that information would breach the Data Protection Act. If a request is made for a document (e.g. Governing Body minutes) which contains personal information whose release to a third party would breach the Data Protection Act, the document may be issued by blanking out the relevant personal information according to the redaction procedure³.

How much can we charge?

17. The Act allows governing bodies to charge for providing information.

18. The first step is to determine if the threshold (currently £450) would be exceeded. Staff costs should be calculated at £25 per hour. You can take account of the costs of determining if the information is held, locating and retrieving the information, and extracting the information from other documents. You cannot take into account the costs involved in determining whether information is exempt.

19. If a request would cost less than the appropriate limit (currently £450), the School can only charge for the cost of informing the applicant whether the information is held, and communicating the information to the applicant (e.g. photocopying, printing and postage costs).

20. If a request would cost more than the appropriate limit (£450), the School may turn the request down, answer and charge a fee, or answer and waive the fee.

21. The School will usually respond to straightforward enquiries free of charge and charge only where the costs are significant.

22. If a charge is to be made, the enquirer will be sent a fees notice. The School does not have to comply with the request until the fee has been paid.

Is there a time limit for replying to the enquirer?

23. Compliance with a request must be prompt and certainly within the legally prescribed limit of twenty working days, excluding school holidays. Failure to comply could result in a complaint to the Information Commissioner. **The twenty-day period begins on the date the request is received. If, however, the enquirer is asked for more information to clarify the request, the period begins when this further information has been received.**

24. If a qualified exemption applies and more time is needed to apply the public interest test, you should reply within the 20 days stating that an exemption applies and giving an

³ The procedure for redaction is:

i) mask the passages which are not to be disclosed and photocopy; (ii) annotate in the margin against each blank passage, the exemption and section of the Act under which this passage is exempt; iv) explain in the covering letter that the relevant exemptions are marked in the attachments and in the case of non-absolute exemptions, how the public interest test has been considered.

On no account must you use the computer to rewrite the document or email and simply delete the exempted passages so that the resulting document appears as though they did not exist. The one circumstance where this would be permissible would be where the only redacted parts are personal information such as people's names and the covering letter explains this.

estimate of the date by which a decision on the public interest test will be made. This should be within a “reasonable” time, normally within 10 working days.

25. If you have notified the enquirer that a charge is to be made, the period between that notification and receipt of payment is not included in calculation of the twenty days.

What action is required to refuse a request?

26. If the information is not to be provided, the person dealing with the request must immediately contact the person in the School with delegated responsibility for FOI to ensure that the case has been properly considered and that the reasons for refusal are sound. If it is decided to refuse a request, you need to send a refusals notice, which must include

- i) the statement that the responsible person cannot provide the information requested;
- ii) which exemptions apply;
- iii) why the exemptions apply (unless self-evident);
- iv) reasons for refusal if based on cost of compliance (see paragraphs 17 to 22 above);
- v) in the case of non-absolute exemptions, how the public interest test justifies withholding the requested information (see Appendix 4);
- vi) reasons for refusal on vexatious or repeated grounds; and
- vii) the internal complaints procedure.

27. For monitoring purposes and in case there is an appeal or an investigation by the Information Commissioner, the responsible person must keep a record of all enquiries where all or part of the requested information is withheld and exemptions are claimed. The record must include the reasons for the decision to withhold the information. Records should be retained for five years. There are no requirements to keep records where you have supplied the information requested.

What do I do if someone complains?

28. Any written (including email) expression of dissatisfaction - even if it does not specifically seek a review – should be handled through the School’s internal complaints procedure. Wherever practicable, the review should be handled by someone not involved in the original decision. The School should maintain records of all complaints and their outcome.

29. If the outcome of a review is a decision that information was wrongly withheld, it should be disclosed as soon as is practicable. If the outcome is that the original decision or action was appropriate, the applicant should be informed of their right to appeal to the Information Commissioner in writing. Appeals should be addressed to FOI Compliance Team (complaints)

Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF

Appendix 3 ST MONICA'S CATHOLIC PRIMARY SCHOOL Exemptions from FOI Requests

1. Although decisions on disclosure should be made on a presumption of openness, the FOI Act recognises the need to preserve confidentiality and protect sensitive material in some circumstances.
2. You cannot withhold information in response to a valid request UNLESS one of the following applies:
 - an exemption from disclosure;
 - the information sought is not held;
 - the request is considered vexatious or repeated; or
 - the cost of compliance exceeds the threshold.

The duty to confirm or deny

3. A person applying for information has the right to be told if the information requested is held by the school and, if it is, to have the information sent (subject to any relevant exemptions). This obligation is known as the school's "duty to confirm or deny". The school does not, however, have to confirm or deny if:
 - the exemption is an absolute exemption (see paragraph 6); or
 - in the case of qualified exemptions (see paragraph 8), confirming or denying would itself disclose exempted information.

Exemptions

4. A series of exemptions is set out in the Act. Some are very specialised in their application (such as national security) and would not usually be relevant to schools. There are more than twenty exemptions but schools are likely to use only a few of them.
5. There are two general categories of exemption:

Absolute - there is no requirement to confirm or deny that the information is held, disclose the information or consider the public interest in disclosure; and

Qualified - even if an exemption applies, there is a duty to consider the public interest in disclosing information.

What are the Absolute Exemptions?

6. There are eight absolute exemptions. If an absolute exemption applies:
 - it does not mean that you are absolutely forbidden to disclose. It means that disclosure is not required by the Act. A decision could be taken to ignore the exemption and release the information after taking into account all the facts of the case; and
 - there is still a legal obligation to provide reasonable advice and assistance to the enquirer
7. The absolute exemptions are set out below. **Those most relevant to schools are marked with an asterisk(*)**.

7.1 Information accessible to the enquirer by other means* (Section 21).

If information is reasonably accessible to the applicant by means other than an FoI request, it is exempt information. This is the case even if the enquirer would have to pay for the information. The exemption covers information which you are required to provide under other legislation or which is accessible through the School's Publication Scheme (see Appendix 1).

7.2 Information dealing with security matters (Section 23) (see also qualified exemption under Section 24 on national security).

This applies to information directly or indirectly supplied by or relating to, bodies dealing with security matters such as GCHQ, MI5, MI6, Special Forces and the National Criminal Intelligence Service.

7.3 Court records (Section 32) (see also the qualified exemption under Section 30 concerning investigations and proceedings conducted by public authorities).

This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.

7.4 Parliamentary Privilege (Section 34).

This exempts information for the purpose of avoiding an infringement of the Parliamentary privilege. Parliamentary privilege is an immunity whereby MPs cannot be prosecuted for sedition or sued for libel or slander over anything said during proceedings in the House.

7.5 Prejudice to the effective conduct of public affairs (Section 36) (see also the qualified exemption part of Section 36).

This relates to the maintenance of the collective responsibility of Government Ministers.

7.6 Personal information* (Section 40) (see also the qualified exemption part of Section 40).

Where enquirers ask to see information about themselves, such information is exempt because it is covered by the Data Protection Act.

7.7 Information provided in confidence* (Section 41).

This relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that (or another) person.

7.8 Prohibitions on disclosure* (Section 44)

Information is exempt where its disclosure is prohibited under any other legislation, by order of a court, where it would constitute a contempt of court or where it is incompatible with any EC obligation.

What are the Qualified Exemptions?

8. The qualified exemptions are set out below. **Those most relevant to schools are marked with an asterisk (*)**. If a qualified exemption applies, there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing information. Guidance on the public interest test is set out in Appendix 4.

8.1 Information intended for future publication* (Section 22).

If, at the time of the request, information is held with a view to publication and it is reasonable that it should not be disclosed until the intended date of publication, then it is exempt from disclosure. This could apply to statistics published at set intervals or where information is incomplete and it would be inappropriate to publish prematurely⁴.

⁴ Note the following:-

- the intended publication does not have to be by the School; it can be by another person or body on behalf of the school;

8.2 National security (Section 24) (see also absolute exemption 23).
Information is exempt for the purposes of safeguarding national security.

8.3 Defence (Section 26).
Information is exempt if its disclosure would prejudice the defence of the UK.

8.4 International relations (Section 27).
Information is exempt if its disclosure would or would be likely to prejudice relations between the UK and any other state or international organisation.

8.5 Relations within UK (Section 28).
Information is exempt if its disclosure would (or would be likely to) prejudice relations between any administration in the UK ie the Government, Scottish Administration, Northern Ireland Assembly, or National Assembly of Wales.

8.6 The economy (Section 29).
Information is exempt if its disclosure would (or would be likely to) prejudice the economic or financial interests of the UK.

8.7 Investigations and proceedings conducted by public authorities* (Section 30).
Information is exempt if it has at any time been held by the School for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.

8.8 Law enforcement* (Section 31).
Information which is not exempt under Section 30 (Investigations and proceedings) may be exempt if disclosure would (or would be likely to) prejudice the following:

- the prevention or detection of crime;
- the apprehension or prosecution of offenders;
- the administration of justice;
- the exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, whether circumstances justify regulatory action, ascertaining a person's fitness or competence in relation to their profession, ascertaining the cause of an accident, or protecting or recovering charities or their properties; or
- any civil proceedings brought by or on behalf of the School which arise out of an investigation carried out for any of the purposes mentioned above.

The duty to confirm or deny does not arise where prejudice would result in any of these cases.

8.9 Audit Functions (Section 33).
Information is exempt if its disclosure would (or would be likely to) prejudice the exercise of an authority's functions in relation to the audit of the accounts of other public authorities. It does not apply to internal audit reports.

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- the date of publication does not have to be known; it could be at some future date (although it is recommended that some idea of a likely date is given); and
 - the duty to confirm or deny does not apply if to do so would involve the disclosure of any of the relevant information.

8.10 Formulation of government policy (Section 35).

Information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (eg Attorney General) and the operation of any Ministerial private office.

8.11 Prejudice to the conduct of public affairs (Section 36) (excluding matters covered by the absolute exemption part of Section 36).

Information is exempt if its disclosure is likely to prejudice the maintenance of the convention of the collective responsibility of Ministers or likely to inhibit the free and frank provision of advice or exchange of views.

8.12 Communications with the Queen* (Section 37).

Information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household, or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

8.13 Health and Safety* (Section 38)

Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

8.14 Environmental information* (Section 39)

Information is exempt under FOI where it is covered by the Environmental Information Regulations. Environmental information can cover information relating to: air, water, land, natural sites, built environment, flora and fauna, and health. It also covers all information relating to decisions or activities affecting any of these.

8.15 Personal information* (Section 40) (see also the absolute exemption part of Section 40).

Where an individual seeks information about themselves, the Data Protection Act applies. Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act or data protection principles or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data Protection Act. The duty to confirm or deny does not arise in relation to this information if doing so would involve the disclosure of such information.

8.16 Legal professional privilege* (Section 42).

Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally such information will be privileged. A school wishing to disclose the information will need to seek consent from the provider of the advice. This exemption covers all such information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.

8.17 Commercial interests* (Section 43).

Information is exempt if it constitutes a trade secret or if disclosure would be likely to prejudice the commercial interests of any person or body (including the School). The duty to confirm or deny does not arise where prejudice would result to commercial interests. In relation to trade secrets, however, section 43 does **not** remove the obligation to inform an applicant whether it holds the information that constitutes the trade secret.

Protective Markings and Applying Exemptions

9. When considering if an exemption to disclosure should apply, bear in mind that the presence of a protective marking (Restricted, Confidential or Secret, with or without

descriptors such as Staff, Management, Commercial etc) is not in itself sufficient grounds on which to prevent disclosure. Each case must be considered on its merits.

Timing

10. Where information has previously been withheld, it must not be assumed that any subsequent requests for the same information will also be refused. Sensitivity of information decreases with age and the impact of any disclosure will be different depending on when the request is received. Therefore, for each request, it will be necessary to consider the harm that could result at the time of the request and, while taking into account any previous exemptions from disclosure, each case should be considered separately.

Next steps

11. In all cases, before writing to the enquirer, the person given responsibility for FoI by the School's Governing Body will need to ensure that the case has been properly considered, and that the reasons for refusal to disclose are sound.

APPENDIX 4 ST MONICA'S CATHOLIC PRIMARY SCHOOL Applying the Public Interest Test

Note: This Appendix is based on the DfES Guide for Maintained Schools on Full Implementation [of the FoI Act] from January 2005.

Background

1. Having established that a qualified exemption definitely applies to a particular case, you must then carry out a public interest test to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. Therefore, unless it is in the public interest to withhold the information, it has to be released. Although precedent and a developed case law will play a part, individual circumstances will vary and each case will need to be considered on its own merits.

Carrying out the test

2. It is worth noting that what is in the public interest is not necessarily the same as that which may be of interest to the public. In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one. Applying such a test depends to a high degree on objective judgment and a basic knowledge of the subject matter and its wider impact. Factors to be taken into account include:-

For Disclosure	Against Disclosure
Is disclosure likely to increase access to information held by the School?	Is disclosure likely to distort public reporting or be misleading because it is incomplete?
Is disclosure likely to give the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions?	Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving?
Is disclosure likely to improve the accountability and transparency of the School in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm or confusion?
Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy?	Is disclosure likely to seriously jeopardise the School's legal or contractual position?
Is disclosure likely to increase public participation in decision-making?	Is disclosure likely to infringe other legislation, e.g. Data Protection Act?
Is disclosure likely to increase public participation in political processes in general?	Is disclosure likely to create a controversial precedent for the release of information or impair the School's ability to obtain information in the future?
Is disclosure likely to bring to light information affecting public safety?	Is disclosure likely to have an adverse effect on the School's proper functioning and discourage openness in expressing opinions?
Is disclosure likely to reduce further enquiries on the topic?	If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose?

3. Note also that:

- potential or actual embarrassment to or loss of confidence in the School, staff or governors is NOT a valid ground for withholding information;
- the fact that the information is technical, complex to understand and may be misunderstood may not in itself be a reason to withhold it;

- the potential harm of releasing information will diminish over time and should be considered at the time of a request rather than by reference to an earlier decision on a similar request;
- the balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but sometimes on certain higher order considerations such as the need to preserve confidentiality of internal discussions; and
- a decision not to release information may be perverse, eg if withholding it could result in harm to public safety, the environment or a third party.

4. You will need to record the answers to these questions and the reasons for those answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. You need to decide how important each factor is in the circumstances and go on to make an overall assessment.

For Disclosure

5. Where the balance of the public interest lies in disclosure, the enquiry should be dealt with and the information required should be made available. Where the factors are equally-balanced, the decision should usually favour disclosure.

Against Disclosure

6. If, after carrying out the public interest test, it is decided that the information should be withheld, the response to the request should explain clearly how the exemption applies and why the balance of public interest lies in non-disclosure.

There will be occasions when a qualified exemption applies but more time is needed to apply the public interest test. In such a case, you must contact the enquirer within twenty working days and give an estimate of the date by which a decision on the public interest test will be made. This should be within a “reasonable” time. In practice, it is recommended that the decision be made and communicated within twenty days but, where that is not feasible, it is suggested that the delay should not exceed ten more days.