

Circular Number: 2009/277

Date 30/11/09

Dear Principal

DATA PROTECTION ACT 1998 / FREEDOM OF INFORMATION ACT 2000

You will be aware that schools, as public bodies, are required to comply with the above legislation. Please find below, information which summarises schools' responsibilities in this area, provides advice on compliance and offers links to information for further advice and support.

Data Protection Act 1998 (DPA)

The DPA is a legal framework for processing personal data. It is underpinned by eight Data Protection Principles which schools must comply with:

Data Protection Principles

Personal data must be:

- processed fairly and lawfully
- processed for specified purposes
- adequate relevant and not excessive
- accurate and kept up to date
- disposed of securely when no longer needed
- processed in line with the rights of the individual (right of access, right to have inaccurate information corrected, right to prevent processing likely to cause damage and/or distress)
- kept secure
- not transferred outside the European Economic Area unless adequately protected

Further information on the Data Protection Act be found at:

<http://www.selb.org/foi/webpages/schools.htm>

Photographing children

Please be aware that the definition of personal data extends to photographs of children taken by school staff or others on their behalf (e.g. Photographers). Schools must seek informed consent from parents in relation to the taking and using of such photographs. A common time to do this is at the beginning of a new school year when parents receive information on their child's new school. Photographs taken by parents / relatives at school events are not covered by the DPA. School staff should apply a common sense approach in this area.

Data Protection Registration

Schools must register as Data Controllers with the Office of the Information Commissioner (ICO). Registration must be renewed annually and carries a fee of £35. Schools can register online at:

http://www.ico.gov.uk/Home/what_we_cover/data_protection/notification.aspx

Subject Access Requests

Data Subjects (including pupils and parents) have a right of access to information held about them. In such cases they should submit a written request to the school stating clearly what they wish to access. In most cases copies of educational records must be provided within 15 working days and any other personal data within 40 working days. A child's information must only be released to a parent/guardian where such a disclosure is in the best interests of the child.

Under the Act, a pupil, or someone acting on their behalf, has the right to access their personal information held by the school. This includes:

- information held on computer (or other automated means);
- information held in structured files;
- information in their educational record; and
- unstructured information, for example, held in loose correspondence.

Freedom of Information Act 2000 (FOIA)

The FOIA provides the public with a right of access to official information. Schools have two main obligations under the FOIA:

Publication Schemes

Schools must adopt and maintain a Publication Scheme. A Publication Scheme is a guide to the specific information held by a school and made available to the general public. In 2008 the ICO revised the structure of Publication Schemes and provided seven new standard headings for use by the entire public sector. They are:

- who we are and what we do
- what we spend and how we spend it
- what our priorities are and how we are doing
- how we make decisions
- our policies and procedures
- lists and registers / the services we offer

Schools are required to adopt this new Scheme. The type of information the ICO expects schools to make available (where held) under these new headings can be viewed at:

http://www.ico.gov.uk/Home/what_we_cover/freedom_of_information/publication_schemes/definition_document_schools.ni.aspx

The ICO recommend that this information can be made available on a website, however if this is not practical, it is sufficient to have the information available in hard copy format and made readily available on request.

As an example, you may wish to refer to how the SELB are operating the scheme:

<http://www.selb.org/foi/documents/GuidanceWebsitePublicationScheme.htm>

Dealing with FOI requests

Schools are under a duty to provide advice and assistance to anyone requesting information. The enquirer is entitled to be told whether the school holds the information) except where certain exemptions apply.

A well managed records and management information system is essential to help schools to meet requests. There are prescribed time limits for responding to requests for information. Requests should be dealt with within 20 working days excluding school holidays.

Wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence. A valid FOI request should be in writing, state the enquirer's name and correspondence address and describe the information requested. Expressions of dissatisfaction should be handled

through the school's existing complaints procedure.

Further Information and Support

Please see the following area on the SELB website for further information and resources:

<http://www.selb.org/foi/webpages/schools.htm>

Please do not hesitate to contact the SELB Information Management Team if you require any further advice or support in any of the above areas.

Yours Sincerely,

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