WESTFIELD SCHOOL

FOI & EIR REQUEST HANDLING PROCEDURE

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Document Control

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DOCUMENT HISTORY

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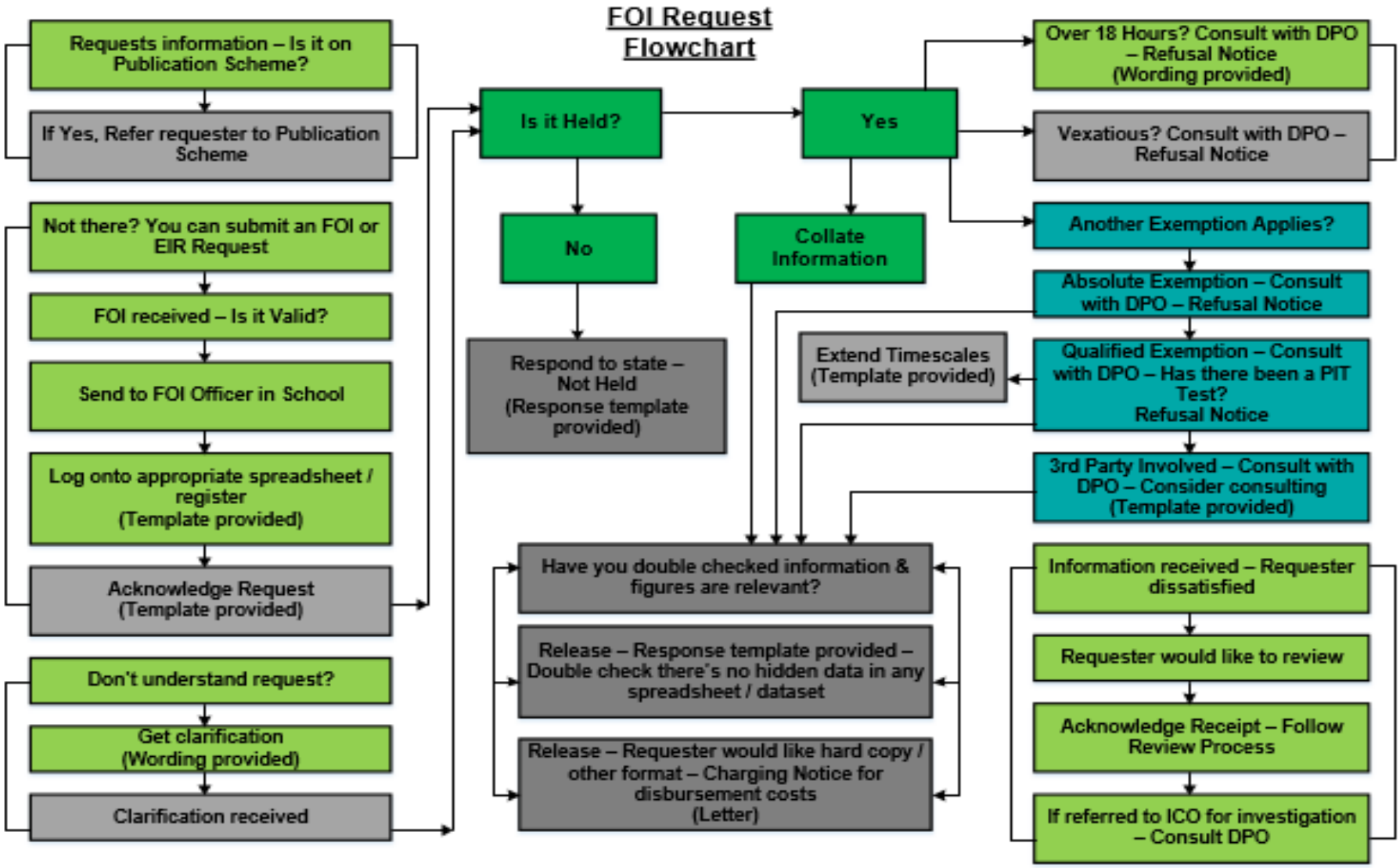
FOI Request Flowchart
Requests information – Is it on Publication Scheme?
If Yes, Refer requester to Publication Scheme
Not there? You can submit an FOI or EIR Request
FOI received – Is it Valid?
Send to FOI Officer in School
Log onto appropriate spreadsheet / register (Template provided)
Acknowledge Request (Template provided)
Don't understand request?
Get clarification (Wording provided)
Clarification received
Is it Held?
No
Respond to state – Not Held (Response template provided)
Yes
Collate Information
Over 18 Hours? Consult with DPO – Refusal Notice (Wording provided)
Vexatious? Consult with DPO – Refusal Notice
Another Exemption Applies?
Absolute Exemption – Consult with DPO – Refusal Notice
Qualified Exemption – Consult with DPO – Has there been a PIT Test? Refusal Notice
Extend Timescales (Template provided)
3rd Party Involved – Consult with DPO – Consider consulting (Template provided)
Have you double checked information & figures are relevant?
Release – Response template provided – Double check there's no hidden data in any spreadsheet / dataset
Release – Requester would like hard copy / other format – Charging Notice for disbursement costs (Letter)
Information received – Requester dissatisfied
Requester would like to review
Acknowledge Receipt – Follow Review Process
If referred to ICO for investigation – Consult DPO

Introduction

Westfield School as a public authority is subject to the provisions of the Freedom of Information Act 2000 (FOIA). The Act provides the general public with a right of access to information held by the School, subject to some exemptions for certain categories of information.

Westfield School is also subject to the provisions of the Environmental Information Regulations 2004 (EIR) where environmental information is held. Further details of EIR requests can be found in Section 8 of this document.

Requests for personal data should be dealt with under the subject access provisions of the Data Protection Act 2018 and the General Data Protection Regulations 2016 (GDPR). See https://www.westfield.hereford.sch.uk/js/plugins/filemanager/files/GDPR%20Policy%20May%202018.pdf

The rationale behind this legislation is to make public authorities more open and transparent; encouraging a proactive approach to making information available.

This guidance is designed to aid you in identifying and answering requests made under the FOIA and EIR.

Further advice is available from Ms. Samantha Smith (School Data Protection Officer (DPO)) – Email: igschools@herefordshire.gov.uk Tel: 01432 260282.

1.0 The Publication Scheme

The FOIA requires public authorities to publish certain information proactively. A Publication Scheme has been adopted by the School to show what categories of information are published, where to find the information, what format it is in, and what charge (if any) is made for it.

Further information can be found in the Publication Scheme www.westfield.hereford.sch.uk

Members of the public requesting information held by the School should be directed to the Publication Scheme in the first instance if the information is published there.

Under the FOIA, the public have a general right of access to recorded information held by public authorities, and may decide to exercise that right if they cannot find the information they require via the Publication Scheme.

2.0 Freedom of Information Act (FOIA) Requests

2.1 Recorded Information

The FOIA applies to recorded information. This includes information held in computers, in emails, and in printed and handwritten documents, as well as images, video and audio recordings. It extends to closed files and archived materials, as well as information in current use.

It does not include your unwritten knowledge, views, opinions, ideas, memories or thoughts.

2.2 Information Held

The FOIA applies to information held by a public authority. This includes information which has been created by the School and information that has been received from others. This could include other public authorities (such as Herefordshire Council or the Department for Education), companies, organisations and members of the public. Such information must therefore be considered when it is relevant to a request.

Information held by another organisation on behalf of the School also falls within the scope of the FOIA.

3.0 Handling Requests

Requesters are encouraged to send their requests direct to admin@westfield.hereford.sch.uk so that they can be swiftly processed. However, requests can be made to any member of staff or Governor, and so it is important that you know how to recognise a request and, if you do receive one, to know whether or not it is valid.

3.1 Is the request valid?

To be valid under the FOIA, the request must:

- Be in writing. This could be a letter or email, or a request made via a social media networking site such as Facebook, etc.
- Include the requester's real name not a pseudonym.
- Include an address for correspondence e.g. a postal address or an email address.
- Adequately describe the information requested. Requesters do not have to ask for a specific document (although they may do so). They can, for example, ask about a specific topic and expect you to gather the relevant information.

You do not have to comply with a request that does not meet the above requirements. However, it is good practice to write to the requester and explain this if this is the case.

A requester does not have to explain why they want the information and what they intend to do with it, and you are not obliged to ask them.

A request does not have to specifically refer to the FOIA for the request to be dealt with under it.

Almost anything which asks in writing for information will count as a request under the FOIA. However, it is very important to draw a distinction between requests and routine correspondence. Requests for information that can be provided without question – such as a leaflet, or, an answer to an enquiry from a parent asking for information e.g. what time an after school club finishes – should be treated as business as usual, rather than as an FOIA request.

Requests which are not for recorded information, but instead ask for explanations or opinions, such as "please explain your decision to do X" are not FOIA requests and should instead be treated as routine correspondence.

Generally speaking, a request should be logged as an FOIA if:

- Any of the information requested is held and its release needs to be actively considered.
- It seems likely that the requested information cannot be disclosed, or you have concerns about disclosing it.

There is a statutory duty to respond to all FOIA requests, telling the requester whether or not the information is held, and supplying any requested information that is held unless an exemption applies.

3.2 Logging the request

The School has delegated the role of FOI Officer to the School Business Manager. Valid FOIA requests that you receive direct should be forwarded **immediately** to the School's FOI Officer. Response time scales start the first working day after the request is received, so it is very important that it's promptly passed to the FOI Officer.

Once received by the FOI Officer:

The request will be logged on an FOIA register / spreadsheet. An example register is included in **Appendix A** of this document.

An acknowledgement letter will be sent to the requester. An acknowledgement letter template is included in **Appendix B.** Acknowledgement of a request should be made within 5 school days, when School is in session. Following the closure of School (due to holidays) all staff should prioritise checking mail and emails for FOIA requests. Any requests that have been received during the School holiday period should be forwarded to the FOI Officer on the first day of School with an acknowledgement letter which explains the delay in responding to the request to be sent to the requester on the second day of School.

3.3 Timescales

The FOIA states that, for all schools covered by it (including maintained schools, academies, pupil referral units and state funded nurseries) the time period for compliance with a request will be whatever is the shorter period –

20 working days following the date of receipt, excluding any day which is not a school day (this effectively equates to a period of 20 school days); **or**

60 working days following the date of receipt.

A 'school day' will be any day on which there is a session and the pupils are in attendance.

'Working days' exclude school holidays and 'inset' or training days where the pupils are not present.

This is a statutory deadline.

You are only able to seek an extension to this deadline if you are considering the public interest test (please see Section 5.7). You are not able to seek an extension for any other reason, including lack of capacity.

Failure to respond to requests within timescales could result in an investigation by the Information Commissioner's Office (ICO).

3.4 Clarification

If a request is unclear and you are unsure what information is required, contact the requester for clarification. The time period to respond to the request will not start, or will be suspended, until clarification is received. If after 2 months you have not received any clarification, the request can be closed down.

An example of the wording to use when seeking further clarification can be found at **Appendix C.**

Remember, you cannot ask why the requester wants the information or what they intend to do with it.

4.0 Collating the Information

The FOI Officer should collate the requested information or instruct appropriate members of staff to collate it.

Firstly, you will need to consider whether the requested information is 'held' for the purposes of the FOIA. Information that is considered to be held by the School includes:

- Information held at the time of the request. This includes information created by the School, information provided by third parties where this relates to a function or business of the School (such as commercial information) and information relating to the Governors where the information relates to the function or business of the School.
- Information stored in off-site servers and cloud storage.
- Information held by other organisations and authorities on the School's behalf e.g. off-site storage.

The information needs to have been retained for the purpose of the School's business. For example, purely personal, political or trade union information is not held for the purposes of the FOIA and so would not be relevant to the request.

Information created after a request is received is not within the scope and is not 'held' for the purposes of the FOIA.

You do not need to create information in order to respond to an FOIA request.

4.1 Is the information held?

You must search for requested information in order to communicate to the requester whether or not it is held. The FOI Code of Practice advises that searches should be conducted in a reasonable and intelligent way based on an understanding of how the public authority manages its records. Searches should be focussed on the areas' most likely to hold the requested information. If a reasonable search in the areas most likely to hold the requested information does not reveal it, you can consider that on the balance of probabilities the information is not held.

If the requested information is not held, a response letter should be sent to the requester advising them of this. An example response template letter is at **Appendix D.**

If the requested information is held by another public authority, for example, Herefordshire Council, it is good practice to confirm this to the requester and provide them with the contact details of that public authority's FOI team so that the requester can direct their request to them instead.

4.2 Appropriate Time Limit – 18 hours

When a request is received, consideration should be given as to how long it will take to:

- Check whether information is held.
- Locate and retrieve information.
- Extract the information.

The FOIA has an "Appropriate Limit" above which we are not obliged to carry out the request. The limit is calculated at £450, based on 2.5 days' work (18 hours) at a flat rate of £25 per hour. If the above tasks would take more than 18 hours to carry out, you cannot charge the requester for the time taken, but you can refuse the request under Section 12 of the FOIA. If these tasks would take less than 18 hours to carry out, then the request must be complied with unless another exemption is applicable.

If you estimate that complying with a request would exceed the 18 hour / £450 threshold, you will need to consider whether or not you want to comply with the request regardless.

Please note that the time spent on any redaction or in considering whether any other exemptions apply cannot be included in the calculation.

When calculating the cost limit you can aggregate requests which ask for the same or similar information and are received within a 60 working day period. These requests can either be from the same person or a group of people acting together.

If you need further assistance, please contact the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282

An example of the refusal wording for this type of request can be found at **Appendix E.**

4.3 Vexatious requests

If a request is clearly designed to cause distress, create difficulty by stopping normal work, or is frivolous, then it may be vexatious.

Likewise, if a person submits an identical or substantially similar request that they have made to you before, you do not have to deal with it unless a reasonable amount of time has passed since receiving the last request.

Please note that it is the request that is considered to be vexatious not the individual making it.

If you think that a request may be vexatious, please contact the School's DPO - email: igschools@herefordshire.gov.uk Tel: 01432 260282, for further guidance on how to proceed.

5.0 Providing the Information

If the information is held, can be gathered within the Appropriate Time Limit, and is not considered to be vexatious, consideration should be given to providing the information to the requester.

However, just because the requester has made a request for the information does not automatically mean that they must be provided with it. There may be other exemptions which apply to some, or all, of the information which prevents release.

Requested information can only be withheld if an exemption applies. You may think that the release of some information could cause embarrassment to the School or may lead to further work or enquiries if parents are upset by something which was revealed as a consequence of responding to a request, but these are not valid reasons for withholding information.

Please bear in mind that it is a criminal offence under Section 77 of the Act to alter, deface, block, erase, destroy or conceal ANY information with the intention of preventing disclosure following a request made under the FOIA.

5.1 Refusals / Exemptions

As explained in Sections 4.2 and 4.3 above, the School can refuse to supply information in response to a request where the request is vexatious / repeated or where the cost exceeds the Appropriate Limit.

It can also refuse to supply all or some of the information requested where an exemption applies.

5.2 FOIA Absolute Exemptions

Some exemptions are 'absolute' which means that the information can be automatically withheld. Listed below are the absolute exemptions which can be applied. Those in bold are the exemptions you are likely to use most frequently (others may be more applicable to other types of public authorities, such as central government departments):

- **Section 21 – Information is reasonably accessible to the requester by other means e.g. it's already published on the School's website**
- Section 23 – Information supplied by, or relating to, bodies dealing with security matters

- Section 32 – Court records
- Section 34 – Parliamentary privilege
- Section 37 – Information relating to communications with Her Majesty and other members of the Royal Household or the conferring of honours
- **Section 40 – Personal information**
- **Section 41 – Information provided in confidence (but only if disclosure would constitute an actionable breach of confidence)**
- Section 44 – Prohibitions on disclosure

If you consider one of the above exemptions may apply to some, or all, of the information being requested, please contact the School's DPO: email: igschools@herefordshire.gov.uk Tel: 01432 260282 to discuss further.

Further details on the above exemptions can be found on the ICO's website: https://ico.org.uk/.

If the requested information is to be withheld in full, or part, because of one of the above exemptions, you will need to explain this to the requester by issuing a refusal notice. A further explanation of refusal notices can be found in Section 5.6

Some key wording which may assist you when writing a refusal notice for one of the above exemptions can be found in **Appendix F.**

5.3 FOIA Qualified Exemptions & the Public Interest Test

Some exemptions are 'qualified', which means that you will need to consider the balance of public interest in deciding whether or not to withhold information.

Listed below are the qualified exemptions which can be applied. Those in bold are the exemptions you are likely to use most frequently:

- **Section 22 – Information intended for future publication**
- Section 24 – Safeguarding national security
- Section 26 – Defence
- Section 27 – International Relations
- Section 28 – Relations within UK
- Section 29 – The economy

- Section 30 – Investigations and proceedings conducted by public authorities
- **Section 31 – Prejudice to law enforcement (prevention or detection of crime)**
- Section 33 – Prejudice to audit functions
- Section 35 – Formulation of government policy
- **Section 36 – Prejudice to the effective conduct of public affairs**
- **Section 38 – Endangering health and safety**
- **Section 39 – Environmental Information**
- **Section 42 – Legal professional privilege**
- **Section 43 – Prejudice to commercial interests**

If you consider one of the above exemptions may apply to some, or all, of the information being requested, please contact the School's DPO: email – igschools@herefordshire.gov.uk Tel: 01432 260282 to discuss further.

Further details on the above exemptions can be found on the ICO's website: https://ico.org.uk/.

If one of the above exemptions does apply, you will need to carry out a Public Interest Test (PIT), which weighs the public interest in disclosure against the public interest in maintaining the exemption.

Public interest considerations will include: promoting further understanding of current issues of public debate, openness and transparency in decisions the School has made and in the spending and allocation of public money, bringing to light matters of public safety, allowing the public to understand and challenge decisions made by the School, or be otherwise in the public interest.

You must bear in mind that the principle behind the FOIA is to release information unless there is a good reason not to. To justify withholding information, the public interest in maintaining the exemption would have to outweigh the public interest in disclosure. When you have come to a conclusion on the balance of the public interest, you will need to either disclose the information, or, write to the requester issuing a refusal notice which explains why you have found that the public interest favours maintaining the exemption.

Some key wording which may assist you when writing the PIT for one of the above exemptions can be found in **Appendix G.**

A template response / refusal notice can be found at **Appendix D.**

5.4 Third Party Information and Information held in contracts

You will need to give careful consideration to the release of information belonging to third parties. Information could contain the personal data of a third party, disclosure of which could breach the Data Protection Act 2018 and the General Data Protection Regulations (GDPR) 2016. Similarly, the information could belong to another organisation, such as a School supplier / contractor, and disclosure could constitute a breach of confidence or could harm their commercial interests. Any contractual information or information obtained from organisations during the tendering process which is held by the School is subject to the provisions of the FOIA.

You will need to consider whether any of the exemptions outlined in Sections 5.2 and 5.3 apply to any, or all, of the information.

You may also need to consider whether it is appropriate to contact the individual(s) to ask for their consent to disclose the information relating to them.

If the information relates to an organisation, you will need to consider consulting with them over disclosure where their views may assist you to decide whether an exemption under the FOIA applies to the information, and, in the event of the PIT being applied, where the view of the third party may assist the School to make a decision relating to the balance of the public interest.

Where input from a third party is required, the response time for the request remains the same (unless extending under the PIT – see Section 5.7) so you will only have a limited time to seek and obtain their views. Please bear in mind that ultimately it is the School's decision whether or not to release information, and you may decide that the public interest in disclosure overrides any views the third party put forward for not disclosing the information.

If you need to discuss further, please contact the School's DPO: email – igschools@herefordshire.gov.uk Tel: 01432 260282

A consultation letter template is at **Appendix H.**

Further details regarding transparency and confidentiality obligations in contracts and outsourced services are outlined in the FOIA Code of Practice https://www.gov.uk/government/publications/freedom-of-information-code-of-practice

5.5 Qualified Person

All of the exemptions detailed previously can be applied by the School's FOI Officer, with the exception of Section 36 – Prejudice to the effective conduct of public affairs (one of the qualified exemptions).

For this exemption to be used, the School's 'Qualified Person' must provide their 'reasonable opinion' as to whether or not disclosure would cause prejudice.

The Qualified Person for each type of public authority is set out in the FOIA, they are not chosen by the authority itself.

The school's Qualified Person is the Chair of Governors.

For further information regarding the use of this exemption, please contact the School's DPO - email: igschools@herefordshire.gov.uk Tel: 01432 260282.

Evidence of the Qualified Person's opinion and how it was reached must be kept. The ICO have a template record of the Qualified Person's opinion which can be used for this purpose, a copy of this is at **Appendix I.**

5.6 Refusal Notices

If you are refusing any, or all, of the information requested, you will need to issue a refusal notice promptly / within the standard time for compliance.

In the refusal notice you should:

- Explain what provision of the FOIA you are relying on to refuse the request. If a qualified exemption was applied you will need to set out the PIT arguments that you have considered.
- Give details of / provide link to the internal review (complaints) process.
- Explain the requester's right to complain to the ICO, including their contact details.

A template refusal notice / response letter can be found at **Appendix D.**

5.7 Can we have extra time to consider exemptions?

You cannot have extra time to consider whether or not an exemption needs to be applied. However, if the exemption that needs to be applied is a qualified one, you can have extra time to consider the PIT. The FOIA says that you can have a 'reasonable' extension of time to consider PIT, which the ICO considers should normally be no more than an extra 20 working days.

To claim this extra time you must:

- Contact the requester in writing within the standard time for compliance.
- Specify which exemption(s) you are seeking to rely on.
- Give an estimate of time for when you will have considered the PIT.

A PIT extension letter template can be found in **Appendix J.**

5.8 Redaction

You can only withhold information covered by an exemption. Complete files or documents cannot be withheld just because part of the information is covered by the exemption.

If an exemption only applies to part of a document, the document should still be released with the parts that the exemption applies to redacted. The refusal notice should outline the reasons why part of the information needs to be withheld.

Redaction should be undertaken with specialist electronic redaction software. Alternatively, redaction of paper documents must be made in black ink and photocopied a sufficient number of times for the redacted information not to show through.

If redacting electronic documents without the use of specialist software, care should be taken to ensure that the redactions cannot be undone or that redactions do not disappear when documents are viewed on phone apps. If in doubt, print out a redacted copy, scan it as a PDF and send that document out.

Remember that redactions can be challenged. Likewise, an exemption applied today may not be relevant in the future, with the passage of time, in which case whether or not the document needs to be redacted would need to be reviewed. For these reasons, the un-redacted document must always be kept as well as the redacted version.

6.0 Releasing Information

If there is information to release or the PIT favours disclosure of the information, it will need to be sent out.

Make sure to review all of the information collated for the request, ensuring that none is missing.

A template response letter can be found at **Appendix D.**

6.1 Method of providing the information

The requester has a right to receive the information, if provided, in a number of ways:

- A copy in permanent form or another form acceptable to the requester (such as a paper copy, or a scanned image).
- A reasonable opportunity to inspect records containing the information.
- A summary of the information.

The requester can give a preference as to how they would like to receive the information, and you must provide it in this form as far as reasonably practical. When considering whether or not it is practical, you can consider the costs and complexity of providing the information in that format and the resources you have available. If you cannot provide the information in the preferred format, you must tell the requester why not. If no preference has been stated, the information should be communicated by any reasonable means.

If providing information electronically, always ensure that the documents are converted and sent in PDF format, unless they are being provided for re-use in open formats. Further details regarding open formats can be found in Section 6.3.

6.2 Checking for hidden data

If releasing or publishing a document, especially a spreadsheet or dataset, you will need to ensure that the document does not contain any so called 'hidden data' that is not immediately obvious.

Hidden data can be disclosed in error when electronic data is not immediately visible on the screen but is however still present within the file. Before disclosing a document, check to ensure that no hidden data is present. Types of hidden data could include:

- **Highlighted data** – data such as text could be blanked out using a highlighter tool, or the text could be formatted to be the same colour as the background and therefore hidden from sight. This could be undone if sent electronically, even if the document has been saved or exported to a PDF file.
- **Hidden rows, columns and worksheets in spreadsheets** – a row or column might be hidden in the spreadsheet and easily unhidden by selecting 'unhide' from one of the tabs. Hidden rows or columns might be identified if they do not flow in a consecutive order e.g. columns A, B, C, F and G may be visible with columns D and E hidden. Worksheets can also be hidden and revealed again.
- **Metadata** – may appear in the document properties when viewed electronically. Photographs can also have metadata attached, such as location which would reveal where it was taken.
- **Pivot Tables** – can be used to summarise a large set of data by creating an automatic summary of the underlying data. However, if the visible data is double clicked upon

the hidden data will also be revealed. If the data is copied into a new spreadsheet there is a risk that the underlying data will be copied over as well.

- **Charts** – can contain underlying data even if copied to another document.
- **Functions** – functions that 'look up' data can also be a means of hiding a list of data.

How to avoid accidently disclosing hidden data:

- **Publish spreadsheets in CSV format**

CSV (Comma Separated Value) is a format where only the visible text is exported. Columns in spreadsheets are separated with a comma. The CSV file format does not support complex features such as hidden data fields, formulae, type formats (e.g. bold, italic, etc.) or comment boxes. If a cell contained a formula then just the formula result would be exported.

To save in a CSV format, open the spreadsheet and from the file tab select either – 'Save As' and choose from the 'Save as type' drop down list: 'CSV', or, choose 'Export' click 'Change file type' and choose 'CSV'. Individual worksheets to be disclosed will have to be saved in each spreadsheet in this way. The exported data can then be manually checked by opening the CSV file and inspecting the data.

- **Check for issues function**

Check documents for hidden data before you disclose them. In some versions of Microsoft hidden data can also be identified using the 'Document Inspector' function which is accessed via the 'Check for Issues' button. The precise method for accessing the Document Inspector depends on the specific version.

- **Save charts as image files**

Copy a chart and paste as an image file (such as jpg or png) into the destination file.

Checklist:

The following checklist highlights a number of things to consider when disclosing certain data types to ensure they do not contain any personal or otherwise exempt data.

File type	Considerations
Spreadsheet	Are you sure you know where all the data is? Are there hidden columns? Are there hidden rows? Are there hidden work sheets? Do pivot tables contain linked data? Do charts contain linked data? Are there formula included which link to external files? Is there any metadata that should be removed? Is the file size larger than you might expect for the volume of data being disclosed?
Word	Are there any comments within the document that should be removed? Does the document contain a version history? Do inserted pivot tables contain linked data? Do inserted charts contain linked data? Is there any metadata that should be removed? Does the document title or filename contain any personal data (e.g. Letter to John Smith)? Has a header or footer been automatically added to a print-out?
Presentation	Are there any presenter notes that should be removed? Do inserted pivot tables contain linked data? Do inserted charts contain linked data? Is there any metadata that should be removed?
PDF	Are there any comments which should be removed? Are all redactions effectively applied? Is there any metadata that should be removed?

Email	Is there data within any attachments that also needs to be redacted? Is there any metadata that should be removed?
Photo or video	Is there any attached data such as location coordinates showing where the photo was taken? Is there personal data that needs to be obscured (e.g. faces of children, car registration numbers?)

6.3 Data Sets

If you are providing information that constitutes a dataset, and the requester has expressed a preference to receive the information in an electronic form, the School must provide it in a re-usable form so far as reasonably practicable. Under the Publication Scheme www.westfield.hereford.sch.uk , the School should also publish datasets that have been requested, and any updated versions that it holds, unless it is satisfied that it is not appropriate to do so.

What is a 'dataset'?

A dataset is a collection of factual information in electronic form to do with the services and functions of the authority that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered. Often, this will mean a spreadsheet of information that you hold.

What is a 're-usable form'?

A re-usable form means that the dataset is in a machine readable format and based on open standards. For example, a spreadsheet that is made available in a CSV (Comma Separated Value) format uses an open standard, whereas a Microsoft Excel spreadsheet does not. Details of how to save spreadsheets as CSV files are detailed in Section 6.2.

As well as requiring public authorities to provide datasets in a form that is technically capable of re-use, the dataset provisions also create a duty, in certain circumstances, to provide them under a license permitting re-use. If the dataset or any part of it is a relevant copyright work, and the School is the only owner, you must make it available for re-use under the terms of a specified licence. Datasets in which the Crown owns the copyright or the database rights are not relevant copyright works. The Datasets Code of Practice recommends that public authorities make datasets available for re-use under the Open Government Licence (OGL), which means that the datasets can be re-used without charge. In order to use the OGL public authorities should include a statement with the dataset to

show that it is being made available under the OGL, as well as a link to the OGL and an attribution statement which those using the dataset should cite.

What do you need to do?

- When the School receives a request for information that it holds in the form of a dataset, it should first consider whether any of the information is exempt from disclosure, as you would with any other FOIA request. If the information is exempt, the duties relating to datasets do not arise.

- If the information is not exempt, then check if it is, or forms part of, a dataset. If it does then this should be provided in a form capable of re-use, in a machine readable format e.g. CSV file.

- The information should be made available for re-use under the OGL where appropriate.

- Under its Publication Scheme, the School should publish datasets that have been requested, and any updated versions that it holds, unless it is satisfied it is not appropriate to do so. Version control should be used to show which the most recent version of the dataset is.

- The dataset provisions do not relate to EIR requests, although you should still consider making environmental datasets available in a re-usable form and under a licence that permits re-use.

What do you need to check before publishing a dataset?

- Check that it does not contain any confidential data or any hidden data fields. Section 6.2 covers how to check for hidden data.

- Make sure that any personal data has been redacted, and check whether there is a risk of re-identification when combining datasets from different sources.

- Ensure that the School owns the copyright and / or database rights before licensing for re-use.

- When releasing a dataset adhere to the Public Sector Principles where possible. It is recommended good practice that datasets will be accompanied by sufficient metadata and contextual information about how and why the dataset was compiled or created.

If you have any further queries, please contact the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282.

6.4 Requests for Hardcopies

Requested information will be sent to requesters via email, free of charge. However, occasionally you may receive a request which requires the information to be provided as a hard copy or in some other format. In these instances, the School can charge the requester for Disbursement Costs e.g. printing, photocopying, postage and supplying the information in a particular format. For further details please see the Schedule of Charges in the Publication Scheme www.westfield.hereford.sch.uk

If a charge applies, the fee must be paid in advance of the information being supplied. The time limit within which a request must be answered by the School will take this into account, so effectively the number of days taken to answer the request does not include the timeframe from when a charging notice is issued and the time when the charge is paid in full.

If a charge is not paid within 3 months of the notification of the charge being issued, the School will consider the request to be closed and take no further action.

A template disbursement charges notification letter is available at **Appendix K.**

6.5 Advice & Assistance

Under Section 16 of the FOIA, the School has a duty to provide advice and assistance to requesters. The School should provide reasonable advice and assistance in the following circumstances:

- To clarify unclear requests (see Section 3.4).
- To help provide the information requested in an acceptable format (Sections 6.3 and 6.4).
- To help narrow responses which exceed the Appropriate Time Limit to take them under that limit (e.g. by reducing the scope of the request, such as the time span of information being asked for).
- When you have refused to provide the information because it is accessible by other means or there is an intention to publish in the future (e.g. give link to website where information can be accessed).
- When the request is transferred to another public authority because they hold the information rather than the School (e.g. provide the contact details of the public authority you think holds the information).

Further information on advice and assistance can be obtained from the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282.

7.0 Review Process

If a requester is dissatisfied with the handling of their request, they have a right to request an internal review. Requesters will have already been advised of their rights and the review process in the response letter that they received. A copy of the internal review procedure is available on request.

Guidance for the review panel can be found in **Appendix L.**

A copy of a review acknowledgement letter template can be found in **Appendix M.**

A review extension of time letter template is in **Appendix N.**

A review response template letter can be found at **Appendix O.**

If the requester is still not satisfied following the outcome of the review, they can appeal to the ICO, who may decide to investigate and ultimately have the powers to impose various notices depending on the nature of the case.

If you need further assistance regarding a review or an ICO investigation, please contact the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282

8.0 Environmental Information Regulations (EIR)

The Environmental Information Regulations 2004 (EIR) define environmental information as:

(a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) Reports on the implementation of environmental legislation;

(e) Cost benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)

Like the FOIA, the EIR covers requests for recorded information e.g. paper and electronic documents, emails, images, video and audio recordings. It extends to closed files and archived materials, as well as information in current use.

However, unlike requests made under the FOIA, EIR requests may be made verbally as well as in writing.

EIR requests have the same response timescales as FOIA requests i.e. 20 working days following the date of receipt, excluding any day which is not a school day (this effectively equate to a period of 20 school days); or 60 working days, whichever is the shorter period. Again, this is a statutory deadline.

If you receive an EIR request, you should follow the process outlined in Section 3 of this document to log and process the request.

8.1 Exceptions

As with FOIA requests, just because the requester has made a request for the information it does not automatically mean that they must be provided with it. Under the EIR, there may be specific exceptions, rather than the FOIA exemptions, which apply to some, or all, of the information which prevents release.

The EIR exceptions are as follows:

Exceptions for personal data:

Regulation 5(3) – Information is the personal data of the requester.

Regulation 13 – Information is the personal data of a person other than the requester.

Exceptions when the information is not held:

Regulation 12 (4) (a) – School does not hold the information when the request is received.

Exceptions when the request is 'manifestly unreasonable' (similar to the FOIA vexatious / repeated requests):

Regulation 12 (4) (b) – Is manifestly unreasonable.

Exceptions when the request is unclear:

Regulation 12 (4) (c) – Is formulated in too general a manner (exception can be used provided assistance has already been given to the requester with a view to re-framing the request).

Other class based exceptions:

Regulation 12 (4) (d) – Relates to unfinished documents or incomplete data.

Regulation 12 (4) (e) – Would involve disclosure of internal communications.

Disclosure would 'adversely affect' exceptions:

Regulation 12 (5) (a) – International relations, defence, national security or public safety.

Regulation 12 (5) (b) – The course of justice, fair trial, conduct of a criminal or disciplinary inquiry.

Regulation 12 (5) (c) – Intellectual property rights.

Regulation 12 (5) (d) – Confidentiality of public authority proceedings when covered by law.

Regulation 12 (5) (e) – Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest.

Regulation 12 (5) (f) – Interests of the person who provided the information.

Regulation 12 (5) (g) – Protection of the environment.

Please note if the information requested information is on emissions, exceptions 12 (5) (d) - (g) cannot be used.

If you have received an EIR request and consider that an exception could apply, further advice is available from the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282

Further information regarding the EIR is available on the ICO's website https://ico.org.uk/

8.2 Cost Limit under EIR

Unlike FOIA, if the time taken to complete the request exceeds 18 hours a refusal notice cannot be issued. However, consideration could be given to issuing a charging notice for the work. If you think this may be applicable to an EIR request you have received, please contact the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282 to discuss further.

8.3 Release of datasets under EIR

The provisions regarding publication of datasets does not cover environmental information issued under the EIR. However, you should still consider making environmental datasets available in a re-usable form and under a licence that permits re-use.

8.4 Requests for reviews of EIR requests

As with FOIA requests, requesters can ask for a review of their EIR request if they are dissatisfied with the way in which this has been handled.

The review procedure is set out www.westfield.hereford.sch.uk and guidance for the internal review panel is in **Appendix L**

If the requester remains dissatisfied following the review, they are at liberty to report the matter to the ICO.

If you receive a request for a review of an EIR request or notification of an ICO investigation into an EIR request, please contact the School's DPO- email: igschools@herefordshire.gov.uk Tel: 01432 260282 for further guidance.

9.0 Review and Revision

This procedure will be reviewed as it is deemed appropriate, but no less frequently than every 2 years.

FOI and EIR Request Handling Procedure review will be undertaken by the School Business Manager.

Appendix A – Example FOIA request log

Request number	Name of requester	Date request received by School	Date response due out	Date response sent	Subject of request	Exemption applied	Exemption applied to whole or part of request	Date internal review request received	Date internal review responded to	Outcome of internal review
001	Kevin Arnold	04.09.18	02.10.18	12.09.18	Amount spent on textbooks in 2017/18	N / A	N / A	N / A	N / A	N / A
002	June Summer	06.09.18	04.10.18	26.09.18	Name of contractor supplying school meals	N / A	N / A	N / A	N / A	N / A
003	Ivor Request	07.09.18	05.10.18	01.10.18	Number of children suspended in 2017/18 and their names	Section 40(2)	Part	01.10.18	23.10.18	Upheld response

Appendix B – FOIA Acknowledgement Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

Telephone: 01568 613147

E-mail: admin@westfield.hereford.sch.uk

Insert date here

Dear XXXX,

FREEDOM OF INFORMATION ACT REQUEST – FOI <INSERT REFERENCE NUMBER>

I acknowledge your request for information received on <INSERT DATE RECEIVED BY SCHOOL>.

Your request is being considered and will be processed by <INSERT RESPONSE DATE> within the statutory timescale of 20 working days, excluding any day which is not a school day (effectively a period of 20 school days) or 60 working days if this is shorter, as required by the Freedom of Information Act 2000.

There may be a fee payable for this information to cover sundry costs. This will be considered and you will be informed if a fee is payable. In this event the fee must be paid before the information is processed and released, the time limit for response would then be suspended until receipt of the payment.

For your information, the Act defines a number of exemptions that may prevent release of the information you have requested. There will be an assessment and if any of the exemption categories apply then the information will not be released. You will be informed if this is the case, and given details of your right to appeal.

If the information you request contains reference to a third party then they may be consulted prior to a decision being taken on whether or not to release the information to you.

If you have any queries or concerns then please contact me, contact details are given at the top of the page.

If you are dissatisfied with the handling of your request, further information regarding our review procedure is available <INSERT LINK TO PROCEDURE>.

Further information is also available from the Information Commissioner at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Telephone: 01625 545 745 Website: https://ico.org.uk

Yours sincerely,

<insert name / job title>

Appendix C – Clarification wording

BY LETTER OR EMAIL

Dear XXXX,

Regarding your recent request for information about <insert brief details of subject of request>, we have been unable to identify the information you have requested from the details provided. To help us meet your request, please could you provide some further clarification as to what you are requesting.

Please can you clarify <insert details of what you require clarification on>

Under S1 (3) of the FOI Act, the statutory limit is suspended until the question has been clarified sufficiently to locate the requested information. Once the details of your request have been clarified it will be considered and processed further.

Please note that if we do not hear further from you within the next 2 months we will consider this request closed.

Regards

<insert name / job title>

Appendix D – Response / Refusal Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

Telephone: 01568 613147

E-mail: admin@westfield.hereford.sch.uk

Dear XXXX,

FREEDOM OF INFORMATION ACT REQUEST – FOI <INSERT REFERENCE NUMBER>

Further to our previous correspondence, your request for information has now been considered and the School's response is set out below:

Question 1 <insert copy of question>

A. <Insert response. Either provide information requested or explain why the information is exempt. Key wording / template PIT for possible relevant exemptions follow in the rest of the Appendices>.

Question 2 <insert copy of question>

A. <Insert response. Either provide information requested or explain why the information is exempt. Key wording / template PIT for possible relevant exemptions follow in the rest of the Appendices>.

If you are dissatisfied with the handling of your request, or, you would like a review of the response provided, further information regarding our review procedure is available <INSERT LINK>

Further information is also available from the Information Commissioner at:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Telephone: 01625 545 745 Website: https://ico.org.uk/

Yours sincerely,

<Insert name / job title>

Appendix E – Appropriate Time Limit / Over 18 Hours Refusal Wording & Aggregated Requests

Appropriate Time Limit / Over 18 Hours Refusal Wording

This information is not held in form that would enable it to be located, retrieved and extracted within the Appropriate Time Limit which equates to 18 hours as defined by the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004.

<INSERT EXPLANATION OF WHAT WORK WOULD BE INVOLVED IF THE REQUEST WAS COMPLIED WITH – I.E. WHAT SEARCHES HAVE BEEN / WOULD NEED TO BE CARRIED OUT? WHY DO WE NEED TO SEARCH THESE FILES / RECORDS? HOW IS THE INFORMATION STORED? HOW MANY FILES / RECORDS WOULD NEED TO BE CHECKED? HOW LONG IS IT ESTIMATED IT WOULD TAKE? E.g. Our electronic reporting systems are unable to run a report for this information. To ascertain the data requested, staff members would need to manually check the paper records for this information. An initial search has shown that 700 pupil record files over the last 5 years would need to be checked for this information, and it is estimated that it would take 2 hours to check each file. Once the information requested has been identified, the details would need to be noted, and once all files had been checked in this way, the total figures requested could be calculated, etc>

This would at a conservative estimate take at least <insert number of hours> hours to complete. Where the Limit is exceeded Public Authorities are not obliged to supply the information requested by virtue of S12 of the Act. Please take this letter as a refusal notice under S17 of the Act.

<If reasonable to do so, provide indication of what information, if any, could be provided within the cost limit. Or, are there any ways in which the request could be reformed / refocused to take it under the cost limit – e.g. could requester reduce the timeframe they require information for, so instead of asking for 10 years' worth of data, they could ask for 2 years' worth? If so, suggest this to the requester>

Aggregated Requests

On <insert dates received> a number of requests regarding <insert subject / topic> were received by the School. All of the requests asked for <insert what information is being requested>.

Under Regulation 5 of the Fees Regulations of the Freedom of Information Act 2000 these requests can be dealt with as an aggregated request.

Regulation 5 states *"when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in Regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:*

- *Made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;*
- *Made for the same or similar information; and*
- *Received by the public authority within any period of 60 consecutive working days".*

We consider this and the other requests received are for the same or similar information <explain why – e.g. made by the same person, made by people working together, same information, similar language being used, made during 60 day period, etc.>

Consequently, we have considered these as an aggregated request, which would exceed the Appropriate Time Limit of 18 hours as defined by the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004. Where the Limit is exceeded Public Authorities are not obliged to supply the information requested by virtue of S12 of the Act. Please take this letter as a refusal notice under S17 of the Act.

Appendix F – Absolute Exemptions: Key Wording for Refusal Notices

Section 21 – Information reasonably accessible by other means

This information is publically available on <insert where information is available e.g. School website / other organisation website> and can be viewed via the following link:

<insert link – must give direct link to the specific information being requested or provide details of where to locate it on website. DO NOT just give link to home page of website and expect requester to find the information themselves>

As such we consider this information to be exempt under Section 21 of the Freedom of Information Act 2000 because it is reasonably accessible to you via other means. Please take this letter as a refusal notice under S17 of the Act.

Section 40(2) – personal data of third parties (other than the requester)

Please see different wording below, to be used depending on the information being requested.

The personal data of third parties has been redacted in accordance with Section 40(2) of the Freedom of Information Act 2000. Please take this letter as a refusal notice under S17 of the Act.

Some information has been withheld because it consists of the personal information of third parties in accordance with the Data Protection Act 2018 and the General Data Protection Regulations 2016. The definition of personal data under the data protection legislation is "any information relating to an identified or identifiable natural person". This includes an individual who can be directly or indirectly identified from the information. There is a reasonable expectation that an individual's right to the privacy of their correspondence in these circumstances is upheld. If the School released identifiable personal data, it would not be processing this data in a fair and lawful manner as required by the legislation. Disclosure would cause some distress with regard to an unexpected loss of privacy. As such this information has been withheld under Section 40(2) of the Freedom of Information Act 2000. Please take this letter as a refusal notice under S17 of the Act.

Requests for personal data of School staff members or Governors

In accordance with the Information Commissioner's guidance on disclosure of information about employees, we consider the <insert detail e.g. CV of staff member, salary details, etc.> who are not of a level of seniority constitutes their personal data, as defined by the Data Protection Act 2018 and the General Data Protection Regulations 2016. The staff

member has no reasonable expectation that this information concerning them would be shared into the wider public domain, and therefore disclosure is not considered to be fair and lawful. As such this information is withheld under Section 40(2) of the Freedom of Information Act 2000. Please take this letter as a refusal notice under S17 of the Act.

Requests where release of low numbers could lead to the identification of an individual

Please note that the exact number of <insert what is being requested e.g. SEND children> has been withheld and instead a range <insert range used e.g. less than 5> has been provided.

The School is aware of the Information Tribunal's decision in the Information Commissioner v Miller (2018) UKUT 229 (AAC) (12 July 2018). However, we believe that this case differs to that put before that Tribunal.

Herefordshire is a rural county with a low population; the current (mid-2017) estimate of the county's resident population is 191,000. Two-fifths of residents live in the most rural areas of the county. Herefordshire has the fourth lowest overall population density in England (the 9th lowest of all 'top tier' local authorities in England and Wales) at 85 people per square kilometre (or 0.85 per hectare; 220 per square mile), and the population is scattered across the 842 square miles of the county. <The School is also relatively small with a pupil population of XXXX>.

The information requested is for recent / current data, rather than historic data which was the subject of the above Tribunal.

When considering how low a figure should be released, the School looks at the type of characteristics of data involved and the context in which it is provided. The risk resulting from identification increases as statistics become more detailed either in terms of geographical area covered and / or the categories of data narrow, as well as from the sensitivity of the characteristics of the data.

<insert how it would be possible to identify an individual. Please take care not to reveal any information in the explanation which could identify them. If an explanation would identify someone, instead of the explanation state – "having seen the data I am satisfied that it is personal data">.

Furthermore, when geographical area is covered such as a School, or type of characteristic is covered for example <e.g. children with learning difficulties>, there is an additional risk that the individuals may be able to identify each other.

When statistics are released at a detailed level the risk of disclosing information about individuals is likely to be increased. When small figures are involved, there could be a risk

that someone with a specific interest in this topic seeing a small number could follow up private sources of information to locate the individuals and discover more details. There could also be a risk of disclosure from combining or linking this data with other information that may be available.

Due to the rural nature of the county and the School, the low population of both, the fact the requested data is current / recent rather than historic and the extremely low number of <insert what is low e.g. SEND children>, it would, in our view, be possible to identify <insert e.g. the pupils concerned> if this were provided to you. This would be a breach of the Data Protection Act 2018 and the General Data Protection Regulations 2016, and this information is therefore exempt under Section 40(2) of the Freedom of Information Act 2000. Please take this letter as a refusal notice under S17 of the Act.

Section 41 – Information provided in confidence

<insert e.g. report / emails> was submitted to the School in confidence. The information was provided to the School <insert detail of who sent / received information> and disclosure of it would constitute a breach of confidence which could result in court action. There was a clear expectation by the sender and the recipient that the correspondence would not be disclosed and that it is confidential in nature. <Disclosure would be detrimental to the process of XXX>. This information is therefore exempt as information provided to the School in confidence under Section 41 of the Freedom of Information Act 2000. Please take this letter as a refusal notice under S17 of the Act.

Appendix G – Qualified Exemptions: Key Wording for Public Interest Tests

Section 22 – Information intended for future publication

This information is due to be published <insert where / how it's going to be published e.g. the School's website or Department of Education website, and indication (if known) of when it is going to be published e.g. at the end of the academic year, etc.>.

We therefore consider your request to be exempt under Section 22 of the Freedom of Information Act 2000 on the grounds that it is intended for future publication. This exemption is subject to the Public Interest Test, and accordingly I have weighed the reasons for and against the release of the information in the public interest as follows:

The public interest in disclosing the information:

<Insert reasons why it would be in the public interest to release the information ahead of its planned publication e.g. openness and transparency, early provision of information to help people make decisions, etc.>

The public interest in not disclosing the information:

<insert reasons why it is not in the public interest to release the information ahead of its planned publication. Could include (delete / add as applicable):

The information is being finalised and checked and it is intended for this data to be published once it has been finalised.

The School is not refusing to disclose the information, but is following a defined course of action before the information is made public. XXX is published on XXX on a XXX basis, and captures the data for the preceding period.

The timetable properly requires internal or limited consideration of the information prior to its public release.

Taking the above into account, I consider the balance in favour of <releasing the information> / <not disclosing the information until it has been published. Please take this letter as a refusal notice under S17 of the Act>.

Section 31 – Prejudice to law enforcement (prevention & detection of crime)

Section 31 (1) (a) of the Freedom of Information Act 2000 exempts information if it would, or would be likely to, prejudice the prevention or detection of crime. <Schools are notoriously soft targets for theft and burglary and release into the public domain of specific details of XXX held by the School presents a burglary risk to the School> / <Disclosure of the

floor plans for the School could place the School at risk of crime because details of the building layouts could be used by intruders to the School buildings>. I therefore consider that in this instance Section 31 of the Act is engaged.

In reaching this decision I have taken into account the Information Commissioner's Guidance Note on this section and the Information Tribunal's decision in Mr C P England & the London Borough of Bexley v the Information Commissioner (EA/2006/0060; 10 May 2007) in which the Tribunal was "satisfied that Section 31 (1) (a) is applicable to information, even if the purpose of the collation of the information was not the prevention of crime per se".

This particular exemption is subject to the Public Interest Test and accordingly I have taken the following factors into consideration:

The public interest in disclosure of the information:

<insert reasons why it would be in the public interest to disclose the requested information. E.g. openness and transparency around the XXX facilities held by the school>

The public interest in non-disclosure of the information:

<insert reasons why it is in the public interest not to disclose the requested information. Could include (delete / add as applicable):

Release of this information into the public domain would provide a 'shopping list' to potential burglars, putting the School at risk of theft and burglary.

The risk of theft of school ICT equipment is heightened by the fact that the hardware may contain personal data relating to the children attending the School.

Schools are notoriously soft targets for theft and burglary, and the release of this information would be invaluable to those with malicious intent to aid them in their endeavours and pose a burglary risk to the School. If theft or burglary was to occur at the School there would be an associated cost to the public purse in having to repair any damage, costs in re-securing the school buildings and costs in purchasing new or additional equipment to replace that which was stolen. If such costs were incurred, to the detriment of other School services, this would not be in the best interests of the children attending the School.

Disclosure of the floor plans under the Freedom of Information Act would, in essence, release these to the world at large. If details of the layouts were released into the public domain, they could be used by intruders to the School to scope access points and the layouts of classrooms and other facilities.

In weighing up these factors, I have concluded that the <public interest favours release of the information> / <the public interest favours withholding the information. Please take this letter as a refusal notice under S17 of the Act>.

Section 36 – Prejudice to the effective conduct of public affairs

Please bear in mind this exemption can only be applied by the School's Qualified Person i.e. the Chair of Governors. Please see the Qualified Person template (Appendix I) which must be completed and will assist you in considering the public interest for this exemption.

We have considered your request for <insert what request for> under the Section 36 <insert which sub-section was considered> of the Freedom of Information Act 2000 which envisages circumstances which in the reasonable opinion of the Qualified Person, it is not appropriate for <xxxx>.

Instances of <XXXX> involve confidential discussions being held, hence the general considerations as to the application of this exemption under Section 36(2) (b) of the Freedom of Information Act for free and frank discussions to take place in confidence.

This exemption is subject to a public interest test, and accordingly I have weighed the reasons for and against disclosure of the information as follows:

The public interest in disclosure of the information:

<Insert reasons why release of the requested information is in the public interest e.g. openness and transparency in decision making, etc.>

The public interest in non-disclosure of the information:

<Insert reasons why release of the requested information is not in the public interest>

Taking the above into consideration, I consider the <public interest in disclosure outweighs the public interest in non-disclosure of the information> / <public interest in disclosure of the information is outweighed by the public interest in not disclosing the information. Please take this letter as a refusal notice under S17 of the Act>.

Section 42 – Legal professional privilege

We consider this information to be material covered by legal professional privilege and therefore Section 42 of the Freedom of Information Act 2000 applies. This exemption is subject to a public interest test, and accordingly I have weighed the reasons for and against disclosure of the information in the public interest as follows:

The public interest in disclosure of the information:

<insert reasons why it would be in the public interest to release the requested information e.g. accountability, transparency, furthering public debate, etc.>

The public interest in non-disclosure of the information:

<insert reasons why it is in the public domain not to disclose the requested information. Could include (delete / add as appropriate):

A client's ability to speak freely and frankly with his or her legal adviser in order to obtain appropriate legal advice is a fundamental requirement of the English legal system. As such there is a strong principle inherent in legal professional privilege in safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice.

If legal advice was routinely disclosed, caveats, qualifications and professional expressions of opinion might not be given which would prevent free and frank correspondence between the School and its legal advisers. Legal advisers would be deterred from giving comprehensive advice and the quality of decision making would be reduced, as it would not be fully informed and balanced.

The legal advice has not been previously disclosed to a wider audience and so is still considered confidential.

The legal advice is still pertinent and is currently being relied upon.

Taking the above into consideration I consider that <the public interest in release of the information outweighs the reasons for non-disclosure> / <the public interest in non-disclosure outweighs any reasons for disclosure of the information. Please take this letter as a refusal notice under S17 of the Act.>

Section 43 – Prejudice to commercial interests

The following checklist will enable you to give full consideration to the public interest test, helping you to consider the main issues and formulate arguments for / against release when considering the application of this exemption**:**

Are all of the details within the information / document being requested commercially sensitive, or could some of the information be released? Please indicate which parts / clauses could be released

Is all or some of the information available to the public already by other means (e.g. already placed in the public domain through some form of publication)? If so, where is it?

Does the information contain any trade or business secrets? E.g. it details an invention, manufacturing process, craft / recipe, development plans, pricing information, etc. If yes, give details

Was / is the information subject to a procurement exercise / a contract? If yes, give details

Will a tender exercise / contract for the same or similar information be run again in the future? If yes, when is this being re-tendered?

Did the contractor / bidder / supplier indicate when tendering that the information they were supplying was commercially sensitive or confidential? If yes, what did they state?

If there is any possibility that release of the requested information may harm the commercial interests of the contractor / supplier / bidder it will be necessary to consult with them about this request and seek their views on disclosure (a copy of a consultation letter is at Appendix H). What are their contact details?

What harm to the School's commercial interests would release of the information cause?

Could the information potentially be used by competitors to their own advantage and to the disadvantage of the School / the contractor / suppliers / bidders? If yes, please outline how it could be used and for each party, how it would disadvantage them

Please note that the requested information has been <redacted> / <withheld in its entirety> under Section 43(2) of the Freedom of Information Act 2000 because disclosure would, or would be likely to prejudice the commercial interests of <name of organisation prejudiced / School>. In reaching this decision I have taken into account relevant guidance provided by the Information Commissioner, including whether the information in question is commercial or industrial.

The School is satisfied that the information to which the exemption applies contains <commercial / industrial> information. The requested information contains <outline what it contains (NO SPECIFICS) e.g. marketing plans, pricing information>.

As such it has been determined that the <redacted> <withheld> information is not trivial and includes data which <could potentially be used by their competitors to their own advantage and to the disadvantage of XXX. Disclosure of the withheld information would disclose a package of information brought together using the skills and experience of XXX which could be of valuable use to their competitors>.

Consideration has also been given as to whether the information is available by other means / has been passed into the public domain. <Insert details of what information on this topic is already publically available, such as on the School's website>. However, the <redacted> <withheld> information encompasses aspects which are unique to the <contract / service level agreement, etc.> and as such is not available by other means and has not been published in the public domain.

In accordance with the Information Tribunal's decisions in Derry City Council v Information Commissioner (EA/2006/0014) (11 December 2006) and Keene v the Information Commissioner & the Central Office of Information (EA/2008/0097) (14 September 2009), the School has consulted with <insert name of organisation consulted with> to seek their views on disclosure.

<XXX> has confirmed that disclosure of the <redacted> / <withheld> information would prejudice their commercial interests. <Insert details of what XXX advised when consulted, taking care not to reveal any specific details which could be commercially sensitive>.

The School accepts that the legitimate economic interests of <XXX> would be adversely affected by disclosure of the information.

<The School is also able to consider its own commercial interests as well as those of its supplier> <insert details how the school's commercial interests would be adversely affected by disclosure, taking care not to reveal any specific details which could be commercially sensitive>.

In coming to this decision, I have weighed the public interest in disclosure against the public interest in not disclosing the information and the commercial interests of <supplier / School> as follows:

The public interest in disclosure of the information:

<Insert reasons why disclosure of the information is in the public interest e.g. openness and transparency, accountability, enable the public to better scrutinise spending of public monies>

The public interest in non-disclosure of the information and the commercial interests of XXX / XXX:

<Insert reasons why disclosing the information is not in the public interest, based upon any reasons put forward by XXX or detail how the School's commercial interests could be affected>.

Taking the above into consideration I have found that <the public interest in release of the information outweighs the reasons for non-disclosure> / <the public interest in non-disclosure outweighs any reasons for disclosure of the information. Please take this letter as a refusal notice under S17 of the Act.>

Appendix H – Third Party Consultation Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

Telephone: 01568 613147

E-mail: admin@schoolemail address

Insert date here

Dear XXXX,

FREEDOM OF INFORMATION ACT REQUEST – FOI <INSERT REFERENCE NUMBER>

<School name> has received a request under the Freedom of Information Act 2000 for <insert detail of what is being requested e.g. copy of contract for XXX with school>.

The Freedom of Information Code of Practice requires us to consider consulting with third parties whose information may need to be disclosed to the requester.

With regards to some requests for information under the Freedom of Information Act certain 'exemptions' apply. An exemption could apply for example where commercial interests are adversely affected. Some or all of this information could then be withheld. It is important to note that some exemptions are also subject to a public interest test, in which the School has to weigh up the reasons for and against disclosure.

Please can I therefore ask what <name of organisation> views are on disclosure of this information?

Do you object to the release of any of the information? If so, what parts?

What harm would, or would be likely, to be caused to your commercial interests if this information were released?

I will then consider this where necessary against the public interest and make a decision on disclosure. Please note that under the statutory duties of the Freedom of Information Act I may decide that the public interest in disclosure overrides any views you put forward in not disclosing the information, however, I will let you know our decision.

Due to the statutory deadlines around such requests I would be grateful if you could let me know your views on disclosure by <insert date response required by>. If I do not hear further from you by that time we will assume that you have no objection to the release of this information.

Further information regarding the Freedom of Information Act 2000 can be found via the following link: http://www.legislation.gov.uk/ukpga/2000/36/contents

Yours sincerely,

<Insert name / job title>

Appendix I – Record of the Qualified Person's Opinion

Record of the qualified person's opinion
Freedom of Information Act 2000 Section 36

When dealing with a complaint regarding section 36 of the Freedom of Information Act 2000, the ICO will expect to see evidence of the qualified person's opinion and how it was reached. We require this evidence in order to decide whether the opinion was a reasonable one. The following form sets out the minimum information that we expect public authorities to provide to us about the qualified person's opinion, in the event of a complaint.

Completing this form is a convenient way for public authorities to give us the information we need. It is intended as a tool to assist public authorities, but there is no statutory requirement for them to use it; if instead they are able to send us other documents that record the same information about the qualified person's opinion, we will accept those.

While the purpose of the form is to help in providing information to us when we are investigating a complaint, public authorities may also wish to use it when they are considering applying section 36, as part of the internal process of obtaining and recording the qualified person's opinion.

Please see the notes at the end for help in completing this form. For further information on section 36 of the Freedom of Information Act 2000, please see our guidance document on Prejudice to effective conduct of public affairs (section 36).

This form only records the qualified person's opinion under section 36(2) of the Freedom of Information Act. If the qualified person's opinion is that section 36(2) is engaged (ie that disclosure of the information would or would be likely to cause prejudice or inhibition), the public authority must then carry out the public interest test. As a matter of good practice, public authorities should also keep a record of the factors considered in the public interest test and the outcome of that test.

The public authority	
1. Name of the authority	
The qualified person	
2. Name *(see Notes below)*	
3. Job title	
4. Subsection of s36(5) under which qualified person is authorised *(see Notes below)*	
Information on which opinion was sought	
5. Brief description of the information requested	
6. Information was	☐ shown to qualified person ☐ described to qualified person
Submission to the qualified person	
7. Date opinion sought	__ / __ / ____ (DD/MM/YYYY)
8. Subsection(s) of s36(2) on which opinion was sought *(see Notes below)*	☐ 36(2)(a)(i) ☐ 36(2)(a)(ii) ☐ 36(2)(a)(iii) ☐ 36(2)(b)(i) ☐ 36(2)(b)(ii) ☐ 36(2)(c)
9. Arguments put forward as to why prejudice/ inhibition would/ would be likely to occur	
10. Counter arguments put forward	
11. Any other factors taken into account	

The qualified person's opinion

12. *(see Notes below)*

The qualified person's opinion is that, if the information requested were disclosed, the prejudice/ inhibition specified in the following section(s) of the Freedom of Information Act 2000

☐ 36(2)(a)(i)
☐ would occur ☐ would be likely to occur
for the following reasons(s): ……..
…….
……..

☐ 36(2)(a)(ii)
☐ would occur ☐ would be likely to occur
for the following reasons(s): ……..
…….
…….

☐ 36(2)(a)(iii)
☐ would occur ☐ would be likely to occur
for the following reasons(s): ……..
…….
…….

☐ 36(2)(b)(i)
☐ would occur ☐ would be likely to occur
for the following reasons(s): ……..
…….
…….

☐ 36(2)(b)(ii)
☐ would occur ☐ would be likely to occur
for the following reasons(s): ……..
…….
…….

☐ 36(2)(c)
☐ would occur ☐ would be likely to occur
for the following reasons(s): ……..
…….
…….

13. Date opinion was given *(see Notes below)*	__ / __ / ____ (DD/MM/YYYY)
14. Qualified person's signature *(see Notes below)*	

Notes for completing this form

2. Where the public authority itself, rather than an individual, has been authorised as the qualified person, the name will be that of the highest decision making body of the authority.

4. Please refer to section 36(5) of the Freedom of Information Act 2000 for the list of qualified persons.

8. This lists the subsections of section 36 which the qualified person was asked to consider.

The full text of section 36(2) is as follows:

> *(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—*
>
> *(a) would, or would be likely to, prejudice—*
>
> *(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or*
>
> *(ii) the work of the Executive Committee of the Northern Ireland Assembly, or*
>
> *(iii) the work of the Cabinet of the Welsh Assembly Government.*
>
> *(b) would, or would be likely to, inhibit—*
>
> *(i) the free and frank provision of advice, or*
>
> *(ii) the free and frank exchange of views for the purposes of deliberation, or*
>
> *(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.*

12. This lists the subsections of section 36 which the qualified person decided were engaged. Please tick the relevant subsection(s), and in each case indicate whether the prejudice or inhibition would or would be likely to occur and the reasons for this.

13. This is the date on which the qualified person's opinion was given. If the form is completed after that, the date entered here must still be the date on which the opinion was given.

14. Where the public authority itself, rather than an individual, has been authorised as the qualified person, the form should be signed on behalf of the highest decision making body of the authority. In that case, please also print the name of the person signing on behalf of that body.

Appendix J – Public Interest Test Time Extension Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

E-mail: admin@westfield.hereford.sch.uk

Telephone: 01568 613147

Insert date here

Dear XXXX,

FREEDOM OF INFORMATION ACT REQUEST - FOI <INSERT REFERENCE NUMBER>

Your above request for information is currently being considered. As advised in my acknowledgement letter of <insert date of acknowledgement letter> the statutory deadline for responding to this request expires on <insert date request due by>.

In compliance with Section 1(1) (a) of the Freedom of Information Act 2000 I can confirm that the School does hold the information that you have requested.

However, due to the complexity of this information and the proper considerations as to whether any part of it constitutes information which may be exempt from disclosure under the Public Interest Test, because <insert which exemption you may be seeking to rely on e.g. release may prejudice commercial interests> this time limit will need to be extended. This is in accordance with Section 10(3) of the Act.

Following the Information Commissioner's Office guidance on the limits on considering the public interest following requests for information under the Act we are extending the time limit for this information by a further 20 working days. We will now provide a response to you by <insert new response date>.

Further information is also available from the Information Commissioner at:

Information Commissioner's Office
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Telephone: 01625 545 745 www.ico.org.uk

Yours sincerely,

<Insert name / job title>

Appendix K – Disbursement Charging Notice Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

E-mail: admin@westfield.hereford.sch.uk

Telephone: 01568 613147

Insert date here

Dear XXXX,

FREEDOM OF INFORMATION ACT REQUEST – FOI <INSERT REFERENCE NUMBER>

Further to our previous correspondence, your request has now been considered and the School's response is set out below:

Question 1 <insert question>

A. To supply the information requested to you will entail a cost of £XXX in respect of <photocopying / printing / postage / statutory fee> as shown below:

<insert breakdown of costs e.g. 351 black and white A4 pages = £XX>, based on the following charges <insert relevant extract from the Schedule of Charges e.g.

Disbursement Cost

Photocopying / printing <detail size and colour, etc. e.g. A4 black and white @10p per side>

Postage – actual cost of Royal Mail standard 2nd class>

This charge is made in accordance with our Schedule of Charges and the provisions of Regulation 8. A copy of our Schedule of Charges can be viewed here <insert link>.

You have 60 working days in which to make payment to us. Payment can be made <insert details of how payment can be made e.g. cheque made payable to School>.

If payment is not received within 60 working days, your request will be considered closed.

Further information is also available from the Information Commissioner at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 01625 545 745 www.ico.org.uk

Yours sincerely,

<Insert name / job title>

Appendix L – Guidance for the Internal Review Panel

A copy of the internal review procedure is available www.westfield.hereford.sch.uk

To ensure requests for review are dealt with in a fair and impartial manner, the review will be undertaken by a panel of Governors who did not deal with / had no involvement in the original response.

The Panel:

- The Panel can be selected from the Governing Body, not including the Chair.
- Each Panel must have 3 nominated members to be Quorate. No Panel will include the Chair of Governors (as the School's Qualified Person the Chair will have no involvement in reviews).
- One of the nominated Governors will act as the Panel lead for the review - investigating and writing the response. The other 2 members of the Panel will provide comments / sign off the response.
- All Panel members are trained in / have an understanding of FOIA and EIR legislation.

Receiving a Request for Review & Setting up a Panel:

- When a request for review is received by the School, the FOI Officer will log the request onto the FOIA register (see Appendix A for example register).
- The FOI Officer will send the requester an acknowledgement letter which will include details of when the response can be expected by (see Appendix M for template letter).
- The FOI Code of Practice states that public authorities who are allowed to exceed the normal 20 working day deadline as a result of regulations made under Section 10(4) for example maintained schools, academies, pupil referral units, etc. should apply the same timescales to internal review. Therefore, requests for review of responses to, or the handling of FOIA or EIR requests, will be dealt with as soon as possible, and in any event, within 20 working days following the date of receipt, excluding any day which is not a school day (this effectively equates to a period of 20 school days; or 60 working days, whichever is the shorter period).
- The FOI Officer will nominate 3 Governors to sit on the Panel. The Governors sitting on each Panel may vary depending on their workloads or availability. The FOI Officer will provide the Governors with a copy of the review request and the original response / any information which was sent out at the time of the original response.

- The Governors on the Panel will determine between themselves who will act as the lead for the review.

- The FOI Officer will keep a record of when the response is due by and will send reminders to the lead at timely intervals e.g. 2 weeks before the response due, 1 week, etc.

Undertaking the Review:

- The Panel lead will undertake an initial investigation and make a fresh decision based on all available evidence that is relevant at the date of the request, not just a review of the first decision. Particular attention will be paid to any concerns raised by the requester. As part of this process, the Panel lead may need to consult with the FOI Officer who wrote the original response and / or the staff member(s) who provided information for the response.

- The Panel lead will need to consider:

  - Whether you agree with the original response or not?

  - Whether you consider new exemptions / exceptions are applicable? If so, these will need to be detailed and an explanation provided to the requester as to why these are engaged – to the extent that this is possible without revealing exempt information.

- Advice and assistance is available from the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282.

- The FOI Code of Practice states that if an internal review is complex, requires consultation with third parties or the relevant information is of a high volume, public authorities may need longer than 20 working days to consider the issues and respond. In these instances, the public authority should inform the requester and provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed.

- If further time is required for an FOIA review, the Panel lead will notify the FOI Officer within the initial 20 working days to confirm that an additional 20 working days is needed, and the reasons for this. The FOI Officer will send the requester an extension letter (Appendix N) confirming the reasons for the delay and the new response date.

- The Panel lead will make an initial recommendation about the validity of the exemptions applied / whether the School complied with its statutory duties / whether another exemption should be applied. Even if the internal review upholds the original decision (e.g. that, as of the date of the request, the information was exempt from disclosure), the ICO suggests that you may wish to release further information if circumstances have changed and the original concerns about disclosure no longer apply. You are not obliged to do this, but if may resolve matters for the requester and reduce the likelihood of them making a complaint to the ICO.

- If the outcome of a review is that information previously withheld should now be disclosed, the information should normally be provided at the same time as the requester is informed of the outcome. If this is not possible, the requester should be informed how soon the information will be provided.

- A proposed response to the requester will be prepared by the Panel lead. A review response template letter can be found at Appendix O.

- The review response will then be sent to the 2 other members of the Panel for comment / sign off.

- How the recommendation is agreed and signed off will depend on the complexity of the review. In most cases, the review response can be agreed by email, but in more complex cases it may be considered preferable to instead hold a meeting to discuss.

- Panel members must respond promptly when asked to comment / sign off to ensure that the review is carried out within the statutory timescales.

Completion of the Review:

- Once the review response has been agreed by the Panel, the response will be sent to the requester by the School Business Manager

- The FOI Officer will update the FOIA register with the outcome of the review and date it was sent out.

- If the Panel find, as a result of the review, that procedures have not been properly followed by the School, and have any recommendations to improve internal processes to prevent a future occurrence, these will be made via the Panel lead to the FOI Officer / Head / Governing Body.

- If the requester makes any further response regarding the review, or if the School is notified that the matter has been referred to the ICO, the FOI Officer will notify the Governors.

- If the School is notified that the matter has been referred to the ICO, the FOI Officer will also inform the School's DPO – email: igschools@herefordshire.gov.uk Tel: 01432 260282, who will be able to advise further.

Appendix M – Review Acknowledgement Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

E-mail: admin@westfield.hereford.sch.uk

Telephone: 01568 613147

Insert date here

Dear XXXX,

REVIEW OF YOUR FREEDOM OF INFORMATION ACT REQUEST – FOI <INSERT REFERENCE NUMBER>

Thank you for your request for a review of the School's processing of your Freedom of Information request, which was received on <insert date review request received>.

The School's review procedure states that the review will be undertaken by a panel of Governors who were not involved in the original decision. The reviewing panel will make a fresh decision based on all available evidence at the date of your request, and will consider the validity of any exemptions applied and whether the School complied with its statutory duties.

A response will be provided by <insert date review response due i.e. 20 working days, following the date of receipt, excluding any day which is not a school day (this effectively equates to a period of 20 school days); or 60 working days, whichever is the shorter period> .

If, for any reason, it becomes necessary to extend this deadline you will be informed of the reasons for this, and advised of a new timescale for a response.

We will now investigate this matter and once we have considered the issues involved, will write to you with the outcome of our review and provide you with a full explanation.

Yours sincerely,

<Insert name / job title>

ON BEHALF OF FOI REVIEW PANEL

Appendix N – Review Extension of Time Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

E-mail: admin@westfield.hereford.sch.uk

Telephone: 01568 613147

Insert date here

Dear XXXX,

REVIEW OF YOUR FREEDOM OF INFORMATION ACT REQUEST: FOI <INSERT REFERENCE NUMBER>

I write further to my letter of <insert date of review acknowledgement letter> in which I advised that a Panel would be undertaking the review of your Freedom of Information request.

Unfortunately, it has become apparent that the determination of your review will take longer than original advised. This is because <insert reasons why an extension is necessary e.g. review complex, requires consultation with third parties, relevant information is of a high volume, etc.>.

I am writing to confirm that a response to your request will now be provided to you by <insert new response date – no more than an additional 20 working days>.

Please be assured that this matter is being investigated and I will write to you with the outcome of your review once all issues have been fully considered.

Yours sincerely,

<Insert name / job title>

ON BEHALF OF FOI REVIEW PANEL

Appendix O – Review Response Letter Template

Westfield School
Headteacher: Ms Nicki Gilbert
Chair of Governors: Eric Williams

Requester name / address / email

E-mail: admin@westfield.hereford.sch.uk

Telephone: 01568 613147

Insert date here

Dear XXXX,

REVIEW OF YOUR FREEDOM OF INFORMATION ACT REQUEST: FOI <INSERT REFERENCE NUMBER>

I write further to your <email / letter> of <insert date of request for review> requesting a review of the response to your Freedom of Information request as set out in <insert name of person original response came from> letter to you of <insert date of School's original response>.

I have now had an opportunity to review the School's handling of your request and would respond as follows:

1. **Information Requested (as set out in your <email / letter> dated <insert date>)**

   <Insert copy of FOI request made>

2. **Information Provided by School (under cover of correspondence dated <insert date>)**

   <Insert copy of School's original response to the request>

3. **Details of Request for Review (as set out in <email / letter> dated <insert date>)**

   <Insert copy of request for review received>

4. **Review of the School's Handling of the Freedom of Information Request**

   <insert details of review undertaken e.g. whether you agree with the original response or not, whether you consider any new exemptions are applicable, etc.>

5. **Conclusion**

<Summary of review undertaken e.g. validity of exemptions applied, whether the School has complied with its statutory duties, whether another exemption should be applied, whether the original response is upheld, etc.>

If you remain dissatisfied with the handling of your request or would like to pursue the matter further, you may wish to refer this matter to the Information Commissioner at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Telephone: 01625 545 745 Website: www.ico.gov.uk

Yours sincerely,

<Insert name / job title>

ON BEHALF OF FOI REVIEW PANEL