

# Handling school FOI requests and the use of the section 36 exemption

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Schools and academies now receive an ever-increasing number of Freedom of Information (FOI) requests, often in response to sensitive situations. Transparency is important but can severely hamper effective school business. How can schools respond?

Schools and academies now receive an ever-increasing number of FOI requests, whether from interested or aggrieved parents or staff, journalists, researchers or members of the public. The Freedom of Information Act 2000 applies to all publicly funded schools, including maintained and academy schools as well as free or special schools.

It significantly impacts schools, granting the public the right to request information such as school budgets, performance data and key decisions about staffing and other sensitive matters. The purpose of the Act is to allow public scrutiny about how schools are run and money is spent, but can cause an impact on school operations, and can be time-consuming to deal with, particularly when there are a number of FOI requests about a controversial decision or plan which is already taking up a lot of time and staff capacity, causing additional stress and pressure.

Sometimes you need to avoid publishing the information, because to do so, could hamper the debate or decision-making on a particular live issue. There is an important 'exemption' under the FOI Act which can assist public bodies in this situation.

## FOI Section 36 exemptions for schools

The Section 36 exemption applies where releasing the information would cause "*prejudice to the effective conduct of public affairs*". You can seek to apply it where disclosure of the information sought "*would or would be likely to inhibit the free and frank provision of advice or ... exchange of views for the purposes of deliberation*" or would "*otherwise prejudice the effective conduct of public affairs*".

As you can see, it could apply in a number of scenarios. For example:

- A maintained school governing body meets to discuss whether to propose becoming an Academy. There are notes made in the meeting and a FOI request is made to see them. Sharing the notes this early may well inhibit free and frank discussion because the governing body may then be concerned that what they say in the meeting may become public.
- A school experiences a cyber-attack resulting in the interference with invoices, which are then tampered with to change the bank details. The subsequent investigation contains information about the cause of the attack and the weaknesses. Processes to remediate are still underway when an FOI is received asking for a copy of the investigation. Revealing these could pose a risk to the school by identifying these vulnerabilities to the world at large.

If you want to rely on this exemption you require a 'Qualified Person' for your organisation to give their 'reasonable opinion' why they consider the exemption is engaged, before then going to carry out a 'public interest test'. The qualified person for maintained schools is the Chair of the Governing Body and for Academies it is the Chair of the Board of Directors of the proprietor of the Academy.

## Dealing with Section 36 exemptions in schools

Dealing with Section 36 exemptions can be very complex, requiring some specialist knowledge. For many Qualified Persons, this can be the first interaction with the freedom of information legislation. Careful records must also be kept, detailing the arguments both for and against release.

Our team are experienced in dealing with the application of all aspects of FOI requests, including the section 36 exemption, and can review material, support the Qualified Person and help ensure compliant records are created.

### Chair of Trustees of a Multi- Academy Trust

*“Thank you for all your support, you made what could have been a stressful process easy to understand and I enjoyed working together”*

## Key contact



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