

FREEDOM OF INFORMATION ACT POLICY

1. Purpose

WJEC CBAC Ltd (“**WJEC**”) will use all appropriate and necessary means to ensure that it complies with the legislation and associated codes of practice issued pursuant to sections 45(5) and 46(6) of the Freedom of Information Act 2000 (“**FOIA**”)

2. Scope

This Policy applies to all staff working for or on behalf of WJEC, including contractors, temporary and agency staff and secondees.

All employees are required to read, digest and adhere to this Policy. Failure to do so may result in disciplinary action.

3. Aim

The aim of this Policy is to communicate the contents of FOIA to all staff so that the basic tenets of FOIA as it applies to WJEC, may be understood and where action is required, that there is a framework to enable them to do so.

The underlying principle of this policy is that the public have a right of access to recorded information held by WJEC. WJEC wish to promote an open regime regarding access to information, subject to exemptions contained within the relevant legislation.

4. The Freedom of Information Act 2000

FOIA applies to all public authorities and came fully into force on 1st January 2005. It provides the public with a statutory right of access to recorded information held by authorities (“FOI Request”), subject to certain exemptions, within twenty working days. FOIA is fully retrospective and applies to all information that falls within the scope of the Act, not just information created from 1st January 2005. Section 19 of FOIA also obliges WJEC to make information pro-actively available in the form of an approved “publication scheme”.

In addition, individuals currently have a statutory right of access to their own “personal data” under the UK General Data Protection Regulation and the Data Protection Act 2018 (“**Data Protection Legislation**”). WJEC has separate policies and procedure in place in relation to individual rights under Data Protection Legislation.

The main features of FOIA are as follows:

- A general right of access to information held by public authorities.
- Sets out exemptions from the duty to provide information.
- Places a requirement on public authorities to exercise discretion; they may have to determine not only whether an exemption applies, but also the extent to which it may apply (some exemptions are conditional and depend on where the balance of “*public interests*”).
- Makes arrangement in respect of costs and fees.
- Places a duty on public authorities to adopt publication schemes.

- Public authorities must make arrangements for enforcement and appeal.
- Places a duty to provide advice and assistance to people who wish to make, or have made, requests for information; and
- Outlines codes of practice.

FOIA defines information very widely and includes material held by WJEC in both electronic and paper form. This includes (but is not limited to):

- Materials created and held by WJEC;
- Materials created by WJEC and held by another organisation on our behalf;
- Materials held by WJEC provided by third parties, where this relates to a function or business of WJEC; and
- Information held by WJEC relating to its trustees where the information relates to functions and business of WJEC.

Requests under FOIA must be dealt with within **20 working days**.

5. Roles and Responsibilities

Every employee, member of staff and contractor of WJEC has a duty to assist with and ensure compliance with WJEC's obligations under the FOIA. In addition to this WJEC as an organisation have ongoing obligations under FOIA and steps it must take to ensure compliance. These are outlined in this below.

5.1 The WJEC:

- Has a Data Protection Officer (the "DPO"] in place who has overall responsibility for the implementation of this Policy, the establishment of systems, procedures and operational process to support WJEC's compliance with its obligations under FOIA;
- Publish and maintain a Publication Scheme;
- Provide relevant training to all staff with responsibilities under FOIA;
- Provide clear lines of reporting and supervision for compliance with requests under FOIA;
- Develop and maintain a clear procedure for recognising and responding to requests for information under FOIA in a timely manner;
- Provide a record management strategy that compliments and aids WJEC's compliance with FOIA;
- Ensure staff of WJEC are aware it is an offence under FOIA to alter, deface, block , erase, destroy or conceal any information from disclosure which WJEC holds;

5.2 The DPO will:

Check the accuracy and content of responses to FOI requests where it is deemed necessary;

- Advise where a request may be subject to an exemption or if the DPO believe the disclosure may be used in a contentious or malicious way;
- Appoint an individual (or group of individuals) to act as the point of contact for each FOI Request;
- Obtain, request or assist in obtaining, from each department of WJEC information relevant to each FOI Request;
- Oversee investigations into appeals and complaints in relation to FOI Requests;
- Ensure departmental managers and senior staff are aware of their responsibility of ensuring that any records created and maintained by their respective departments are registered in WJEC information asset register

5.3 WJEC Staff will

- Observe all forms of guidance, codes of practice and procedures regarding the storage, closure, retention and disposal of documents and records. Further information is available in WJEC Data Retention Policy;
- Immediately inform the DPO of all FOI Requests received by the employee directly;
- Provide the DPO with full and appropriate responses to FOI Requests within the timescales required;
- Undertake any formal FOI training deemed necessary by WJEC or the DPO;
- Ensure they are aware of and pay due regard to the rights and obligations arising from FOIA, in particular the public's right of access to any information held by WJEC;
- Ensure they understand breaches of this policy may result in disciplinary action, including dismissal.

6. Managing FOI Requests

The DPO shall be responsible for ensuring sufficiently efficient process to support WJEC's compliance with FOIA are in place at all times and that all FOI requests are managed correctly.

Final draft responses to FOI Requests must be approved by the DPO or delegated to a trained member of staff in the absence of the DPO.

6.1 What is a valid FOI Request

Section 8 of FOIA states a valid request must be:

- In writing;

- State the name of the requester and a valid address for correspondence (email addresses are valid);
- Describe the information requested;
- Be received in legible form; and
- Be capable of being used for subsequent reference.

The term 'in writing' covers requests submitted by letter and electronic form, including those sent by social media. The request does not have to make direct reference to FOIA or Freedom of Information or be the sole or main theme of the requester's correspondence.

When determining whether a name and/or address is valid, where a requester's name is an obvious pseudonym or only includes a part of their real name (e.g. joe@123), then the request will only be valid if their real name is visible elsewhere in the body of the request.

If you have received a request because you or WJEC have been copied into a correspondence from an individual to another person or public authority, please inform the DPO.

6.2 Time limit for a FOI Request

WJEC has systems and procedures in place to ensure that it complies with the duty to confirm or deny it holds the requested information, and to provide a response to requests within the statutory timeframe of **20 working days** from the point of a valid request being received.

WJEC may choose to apply an exemption to any information or refuse a request if it is vexatious or repeated or where compliance with the request will exceed the applicable costs limit. All exemptions or refusals of an FOI Request must be checked with the DPO and issued to the requester within 20 working days.

6.3 How will information be conveyed?

When an individual making their request for information, expresses a preference for communication by any one or more of the following means:

- The provision to the individual of a copy of the information in permanent form, or in another form deemed to be acceptable by the individual;
- The provision to the individual of a reasonable opportunity to inspect the record containing the information requested; or
- The provision to the individual of a digest or summary of the information in permanent form, or in another form acceptable to the individual.

WJEC, so far as is reasonably practicable, will give effect to that preference.

In determining whether it is reasonably practicable to communicate information by a particular means, WJEC will consider all the circumstances, including the cost of doing so. If it is determined that it is not reasonably practicable to comply with any preference expressed by the individual in making their request, the individual will be notified of the

reasons for its determination and WJEC will provide the information by such means as which it deems reasonable in the circumstances.

6.4 Refusal of an FOI Request

The duty to confirm or deny whether information is, or is not, held does not arise if:

- An exemption applies under section 2 of FOIA (see Annex A);
- An estimate demonstrates that the cost of compliance will exceed the applicable limit; or
- It can be demonstrated that the request is repeated or vexatious.

Upon refusal of a request for information, the individual will be informed of the reasons for this decision within **20 working days**, and at the same time will be informed of the procedures for making a complaint about the discharge of the duties of WJEC and their rights in relation to FOI.

If WJEC is reliant upon exemption under part 2 of FOIA (see Annex A), relating to the duty to confirm or deny, a notice will be issued within 20 working days which will state that fact. All notices, refusals and exemptions must be checked and approved by the DPO or an individual to whom the DPO delegates authority.

6.5 Redaction of information

Redaction is a process which is carried out to make information unreadable, or to remove exempt information from a document. This is achieved by blocking out individual words, sentences or paragraphs, or by removing whole pages or sections prior to release of the document. However, if so much information is deemed to be exempt that the document becomes illegible, the entire document should be withheld.

When responding under FOI Request, it must be stated what exemption the information has been redacted under, and this must be done for every exemption.

All redactions must be carried out by WJEC's information team, DPO or an individual authorised by the DPO.

A clean copy of the information (requested information which has not been redacted) must be provided to the DPO, as well the redacted copy and details of the exemption being relied on.

6.6 Internal Review

The DPO may, at entirely the DPO's discretion, from time to time, carry out an internal review of WJEC's process, training and policies concerning FOIA and management of FOI Requests.

The DPO may also conduct internal reviews at the request of an individual that is making or has made an FOI Request. If the internal review concerns an FOI request the DPO will identify and communicate with all relevant staff that assisted with or are assisting with the FOI Request.

6.7 Vexatious or Repeated Requests

Should an individual make a vexatious or repeated request for identical or subsequently similar information, the DPO will inform the requester in writing that it will not fulfil the request. When responding in this manner, the DPO will offer assistance to the individual by indicating why they consider the request is vexatious or repeated. The DPO will also indicate what recourse the individual has if they are unhappy with this position.

6.8 Requests to Multiple Public Authorities

Where WJEC receives a request for information that is similar to one or more requests to similar organisations for information from the same or a group of individuals, WJEC will:

- Work with those organisations to whom the request has been submitted to ensure a consistent and cohesive approach is applied;
- Identify which questions are requests for information;
- Provide, if necessary, advice and assistance to the individual that is reasonable in the circumstances; and
- Provide a response in line with FOIA.

6.9 Requests concerning this Policy and related procedures

All FOI Requests concerning WJEC's policies and procedures in relation to FOIA or FOI Requests will be handled in the same manner as other FOI Requests.

6.10 Formal Complaints

All formal complaints received about the discharge of duties by WJEC under the terms of the FOI Act will be handled in the same manner and using the same procedures as WJEC's Complaints Policy.

6.11 The Information Commissioner (the "ICO")

The ICO is an independent public authority that upholds information rights in the UK. Individuals who are not satisfied with the outcome of their FOI Request may ask the ICO to review how WJEC has performed in response to an individual's request.

6.12 Duty to Provide Assistance

WJEC has a duty to provide advice and assistance to individuals making FOI Requests in line with Section 16 of FOIA and Section 45 Code of Practice, issued by the ICO. WJEC will endeavour to undertake all practical steps it deems to be reasonable to achieve this.

6.13 Identity of the Individual making an FOI Request

FOIA does not mandate that the identity of an individual must be disregarded, though the ICO has advised that, as FOIA enables disclosure of information on grounds of public interest organisations should be blind to the motives of the individual making the request.

On this basis, WJEC will assess all requests on the understanding that the requester's identity is not a relevant consideration.

Possible exceptions to this include, but are not limited to:

- A request is deemed to be repeated;
- The individual has made a request for their own personal data;
- Aggregated costs in line with fees regulations;
- Release would be likely to endanger the Health and Safety of the individual or any other person;
- Prejudice may be caused by releasing the information, either to the individual or to any other person (prejudice-based exemptions only);
- Situations where WJEC is confident that the identity of the requester means the information is reasonably accessible to that person by other means and is therefore exempt by way of Section 21 of FOIA (information accessible to requester by other means).
- If disclosure of third-party personal data would be contrary to data protection principles and/or regulations concerning releasing information to the general public.

6.14 Transferring an FOI Request to another organisation

WJEC recognises that where it does not hold or does not substantially hold the information requested, it may be necessary for the request to be transferred to another organisation. If this is the case the individual will be advised as soon as possible.

If WJEC believe the information requested is held by another public authority WJEC, at its discretion:

- Contact the individual and provide them with details of the organisation that holds the relevant information; or
- Contact the organisation directly on the individual's behalf and transfer the request.

6.15 Third Parties

WJEC recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party; for example, where the information is subject to the common law of duty of confidence, or where it constitutes personal data under UK GDPR. Unless an exemption applies in relation to any particular information, WJEC will be obliged to disclose the information in response to a request.

Where disclosure of information cannot be made without the consent of a third party and would constitute an actionable breach of confidence such that an exemption would apply, WJEC will consult that third party with a view to seeking their consent, unless such consultation is impracticable.

WJEC will undertake consultation where:

- The views of the third party may assist in determining whether an exemption under FOIA applies; or
- The views of the third party may assist in determining where the public interest lies.

WJEC may consider that consultation is not appropriate where the cost or amount of time and/or effort of consulting with the third party would be disproportionate. In such cases, it will consider the most reasonable course of action to ensure that the requirements of FOIA are met. Consultation will be unnecessary where:

- WJEC does not intend to disclose the information; or
- The view of the third party can have no effect on the decision as to whether to disclose the requested information.

Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative, WJEC will, if it considers consultation appropriate, consider it sufficient to consult only some of the organisations.

If a third party does not respond to consultation, it does not relieve WJEC of its duty to disclose information under FOIA, or its duty to reply within the time specified within FOIA. In all cases, it is for WJEC, not the third party, to determine whether information should be disclosed. A refusal to consent to disclosure by a third party does not automatically mean information will be withheld.

WJEC will also look to consult other organisations where the information requested has been provided by that organisation.

Consent will be sought from all other staff to release their information where it is reasonable in the context of the request to do so. The DPO will decide when it is reasonable to seek consent, in line with the principle that employees have a reasonable right to privacy at work.

Requests for salary information will be answered, if applicable, by providing remuneration pay scales.

7. Exemptions and the Public Interest Test

WJEC will consistently encourage the release of recorded information to the public. Sometimes it is not appropriate or practicable for recorded information held by WJEC to be disclosed, and there are 23 exemptions under FOIA which may be applied to withhold information from disclosure. There are two types of exemption: Absolute and Qualified.

Absolute exemptions are not subject to a public interest test; qualified exemptions are subject to a public interest test prior to their release to determine whether to disclose the requested information or to withhold it based on the greater public good. A full list of the exemptions available under FOIA is contained in Appendix A.

The public interest test is set out in Section 2 of FOIA. It provides that, even where the information meets the requirements of a qualified exemption, the information may only be withheld where: *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

A public interest test requires WJEC to consider the competing public interest factors in disclosure and the maintenance of secrecy by weighing the competing information and circumstances. The DPO or an individual to whom authority is delegated will conduct public interest tests without bias, in line with guidance from the ICO, and with a view to releasing the requested information unless the public interest is in favour of maintaining the exemption.

The strength of the factors, both in favour of disclosure and maintaining the exemption, will be assessed on a case-by-case basis.

Section 36 of FOIA enables information to be considered exempt if its disclosure would inhibit the ability of an authority to conduct its business effectively. Reliance on this exemption requires the approval of the DPO.

8. Public Sector Contracts

WJEC will when entering into contracts, refuse to include contractual terms which attempt to restrict the disclosure of information it holds relating to the contract beyond the restrictions permitted by FOIA.

9. Fees

It is not current practice for WJEC to charge for FOI Requests. However, if there is an extraordinary amount of work involved then WJEC reserves the right to charge a flat fee. The decision on the fee charged will be taken on an individual basis by the DPO and will be made on the basis of activity required to meet the FOI Request.

10. Publication Scheme

FOIA makes it a duty of every authority to adopt and maintain a publication scheme relating to the publication of information by the Authority, which is approved by the ICO.

WJEC's Publication Scheme can be found on its website.

11. Disclosure Log

WJEC will maintain a disclosure log that identifies the main types of requests received and responses given.

A disclosure log lists the response to requests made to WJEC under FOIA which may be of wider public interest. This will be available upon request.

The DPO will assess each response to determine whether it should be published in the disclosure log and will make a judgement accordingly by following assessing:

- If demonstratable evidence is included in the information of key decisions made by WJEC;
- Whether the disclosure passes the public interest test; and
- Whether WJEC has spent significant time and resources disclosing the information.

ANNEX A – EXEMPTIONS

Exempt Information under Part 2 of the Act – The Exemptions

There are two types of class exemption identified within the Freedom of Information Act 2000:

Absolute – which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

Qualified – by the public interest test, which requires the public body to decide whether it is in the balance of public interest not to disclose information.

With the exception of Section 21 (information available by other means), exemptions apply not only to the communication of information, but also to the duty to confirm or deny if that itself would disclose information that is reasonable to withhold.

Absolute exemptions:

- **Section 21 – Information accessible to the requester by other means**
Information which is already in the public domain, such as that which is published in the Publication Scheme.
- **Section 23 – Information supplied by, or relating to, bodies dealing with security matters**
Information received from, or relates to, any of a list of names security bodies, such as the security service.
- **Section 32 – Court records**
Information that is only held as part of the documentation for a court, tribunal case or statutory inquiry.
- **Section 34 – Parliamentary privilege**
Information which, if disclosed, would infringe parliamentary privilege.
- **Section 40 – Personal information**
Information which is personal to the person making the request.
- **Section 41 – Information provided in confidence**
An actionable breach of confidence, where disclosure would constitute a breach of confidence that would lead to legal action being taken.
- **Section 44 – Legal prohibitions on disclosure**
Where disclosure of information is prohibited by any other law or regulation, or where it would be a contempt of court.

Qualified exemptions:

- **Section 22 – Information intended for future publication**
Where publication was planned at the time the request was made; for example, an annual report, or the results of an investigation. Requesters will be advised when the information will be published and how it can be obtained.
- **Section 24 – National security**
Information that is not covered by Section 23 under the Absolute Exemption category above, but exemption is needed to safeguard national security. This requires a certificate signed by a Minister of the Crown.
- **Section 26 – Defence**
Information likely to prejudice national defence, or the activities of our armed forces or those of our allies.
- **Section 27 – International relations**
Information likely to prejudice the UK's international relations or interests; for example, information obtained in confidence from another state or international court.
- **Section 28 – Relations within the United Kingdom**
Information likely to prejudice relations between HM Government, Wales, Scotland and Northern Ireland.
- **Section 29 – The economy**
Information likely to prejudice the economic interests of the UK, or part of the UK, or the financial interests of HM Government.
- **Section 30 – Investigations and proceedings conducted by public authorities**
Information held for the purpose of criminal investigations and proceedings, in addition to information obtained from confidential sources relating to these, or civil proceedings arising out of them.
- **Section 31 – Law enforcement**
Information not covered by Section 30, which is likely to prejudice a wide range of investigative activities.
- **Section 33 – Audit**
Applies to information held by public authorities which have functions relating to audit (e.g. National Audit Office), or which examine the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions.
- **Section 35 – Formulation of government policy**
Information held by a government department or the National Assembly for Wales relating to the creation of government policy.
- **Section 36 – Prejudice to the effective conduct of public affairs**

Information that may inhibit the ability of a public authority to conduct its business effectively, should that information be made freely available in the public domain – use of this exemption requires sign off from the CEO following a recommendation from the Operations Director.

- **Section 37 – Communication with Her Majesty and national honours**
This applies to information that relates to communication with Her Majesty, members of the Royal family or Royal household, or the conferring of honours, e.g. recommendations for individuals to receive an honour in the New Year Honours list.
- **Section 38 – Health and safety**
Information that would, or would be likely to, endanger the physical health, mental health or safety of an individual.
- **Section 39 – Environmental information**
Exempted under the Act, but the request will be dealt with in accordance with the EIR.
- **Section 40 – Personal information about a third party**
Information which is personal to the requester , or someone other than the person making the request.
- **Section 42 – Legal professional privilege**
This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings; for example, advice provided by a lawyer to their client, or information relating to ongoing legal proceedings.
- **Section 43 – Commercial interests**
Such as trade secrets, and information which, if disclosed, could harm/prejudice the commercial interests of any person, including the authority holding it.