



FREEDOM OF INFORMATION & ENVIRONMENTAL INFORMATION REGULATION POLICY & PROCEDURE

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1. **POLICY STATEMENT**

This policy sets out how Coleg Gwent will respond to the requirements of The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations (EIR). This legislation places a number of obligations on public authorities to provide access to information held by them. In general, members of the public have the right (subject to a number of exemptions described in this policy) to access information held by the College, regardless of when it was created, who created it, or for what purpose it was originally created. Information should also be provided regardless of what format it is now held in.

2. **PURPOSE AND SCOPE**

Coleg Gwent fully supports the key purpose of both the FOIA and EIR which is to create a culture of openness and transparency in the public sector. As a minimum, the College undertakes to:

- provide a single point of contact for requests for information;
- have a Publication Scheme available to access on the College website;
- ensure all staff are aware of the requirements of the FOIA and EIR; and
- work with other organisations to manage and respond to requests.

3. **ROLES AND RESPONSIBILITIES**

All members of staff have a legal duty to operate in line with the requirements of the FOIA and EIR. Specific responsibilities within the College are:

Principal/Chief Executive

- Has overall responsibility to ensure that the College has adequate procedures in place to support this policy.
- Has been appointed by Welsh Government Ministers as the 'Qualified Person' authorised to make decisions relating to the withholding of information under exemptions set out in section 36 of the FOIA.
- The Principal (or Vice Principals) will give final approval for the release of information.

College Senior Leadership Team

- Will ensure that this policy is communicated and implemented within their areas of responsibility in the College.
- Will work with the Governance Officer to locate and provide information within the required timescales.
- Will work with the Governance Officer to determine whether a request should be refused under a FOIA exemption.

Governance Officer

- Will act as the Freedom of Information Officer and provide a single point of contact for requests under FOIA and EIR.
- Will designate and train a Deputy Freedom of Information Officer.
- Will review and update the Coleg Gwent Publication Scheme every 2 years.
- Will ensure this policy is kept up to date.
- Will log and track all requests and ensure a response is provided within the relevant timescale.
- Will store the details of all requestors in accordance with the Coleg Gwent Information Security Framework.
- Will provide advice where needed, to anyone requesting information.
- Will liaise with the relevant SLT members and teams to prepare responses.
- Will seek approval of the Principal or Vice Principals prior to issuing a response.

Managers

- Will ensure that requests for information are passed promptly to the Governance Officer.
- Will ensure that their team members are aware of the requirements of this policy.

All Staff

- Will pass any requests for information to their line manager promptly.
- Will ensure that records relating to the work of the college are kept up to date, accessible and stored in line with the Information Security Framework and Retention Schedule.
- Will comply with the requirements of this policy.

4. Publication Scheme

Coleg Gwent has in place a Publication Scheme based on the model Publication Scheme for Further Education Colleges approved by the Information Commissioner's Office (ICO). The Publication Scheme is available on the College website and includes details of the type of information held by the College and the format(s) this information is available in, including whether it is routinely available on the College website. This document will be reviewed and updated every two years by the Governance Officer.

5. Privacy Statement

When an individual submits a FOIA/EIR request, the Governance Officer will acknowledge receipt and log the request. Information on requests and the identity of requestors is retained for the purposes of responding to the request and the Governance Officer may need to seek clarification from the requestor, or provide information about charges to be applied. The identity of requestors is not shared internally with colleagues or with any external organisation or individual. Information on the nature of requests is also retained for the purpose of compiling statistical data and for review by the Audit Committee for assurance purposes.

In line with the College's Retention Schedule, information on each request will be held by the Governance Officer for a period of 6 years following the last action taken in relation to the request. A full Privacy Statement can be accessed on the Coleg Gwent website.

6. Identifying a Freedom of Information request

A FOIA request is any request made in a recordable format for specific information. The request may be made by post, or electronic means, including email, fax, audio recording or social media. To be valid, the request must include the name of the requestor and either a postal or email address. Coleg Gwent does not have to respond to anonymous requests for information.

A request does not need to mention the FOIA and in almost all circumstances, any written request for information not routinely provided as part of the day to day operations of the College (e.g. course details, term dates, locations etc.) should be dealt with as a FOIA request. Any member of staff who receives a request for information must pass it immediately to their line manager who will in turn, forward it to the Governance Officer for confirmation as to whether it falls under the FOIA or EIR.

7. The Right of Access and Duty to Confirm or Deny

Both the FOIA and EIR give the public a general right of access to information recorded and held by the College. This right of access does not include the right to view original documents, although where appropriate, requestors may be offered the opportunity to view originals.

The College also has a duty to confirm or deny whether information is held. The Governance Officer will provide this confirmation when responding to a request. This duty also applies to circumstances where a request is being refused, unless the exemption applied specifically removes the duty to confirm or deny.

8. Third party information

The general right of access applies to all information held by Coleg Gwent (subject to exemptions set out in the legislation). Any information belonging to another organisation, but which is held by the College also falls within this duty.

Some exemptions cover third party information, but it is not automatically exempt from release; the onus is on the College to establish why third party information should not be released. In considering requests for information provided by the third party, the College will consult with the originator of the information before reaching a decision on whether or not to release it.

9. Re-use of information and copyright

When responding to a request, release of information should be regarded as release to the world at large. Coleg Gwent however retains the Copyright on any information provided (other than third party information). Requestors may use the information for their own purposes, including news reporting, but will be informed that it must not be published or copied in full to other persons without the consent of the College.

All requests for information will be treated at face value. The FOIA states that requestors may not be questioned about their motives or the intended use of the information requested. Even where it is suspected that a requestor has used a false identity, the College must respond.

10. Timescale for responding to requests

The College must respond to requests for information within 20 working days. 'Working days' excludes bank holidays and weekends, but includes normal working days where the College is closed (for example Christmas break). It is essential therefore that staff forward requests to the Governance Officer promptly.

The main exceptions to this timescale are:

- When we have asked for clarification of a request (see section 11). The clock will pause until we receive a response.
- When we intend to charge a fee for the information (see section 12) and are awaiting a response from the requestor. The clock will pause until we receive a response.

11. Assistance and advice

Where a request is unclear, the Governance Officer will contact the requestor to discuss their requirements and clarify what information is required. The clock will be paused pending the requestor's response.

12. Charging of fees for information

The College will not charge for the majority of information requested. The FOIA does however allow us to charge a fee for providing information that will require significant time and resources to locate, retrieve and prepare. The Information Commissioner's Office has released guidance on fees that may be charged.

An estimation of the cost of providing information may include 'communication costs' i.e.:

- the cost of photocopying or printing and/or postage;
- the cost of physically removing exempt information (i.e. black tape or specialist software, but not the staff hours required to carry out the work); or
- the cost of providing the information in a specific format (a fee will not however be charged where an alternative format is required in compliance with other legislation such as the Equalities Act 2010 or the Welsh Language Standards).

The cost of staff time required to locate, retrieve and extract the information for release may be included in the estimation of cost. This will be based on the rate of £25 per person, per hour.

Where it is estimated that the cost of providing a response will exceed the 'appropriate limit' of £450, the College may refuse the request. The decision to refuse a request on the grounds of cost will be taken by the Principal or Vice Principals in consultation with the Governance Officer.

If the estimate of cost is less than £450, then the college may request a fee. The fee to be paid will however exclude the staff costs. The Governance Officer will issue a Fee Request and/or offer advice on amending the scope of the request to reduce the cost. The 20-working day 'clock' will be paused until receipt of payment, or an amended request. If there is no response to the Fee Request within 3 months, then the college will take no further action and close the request.

13. Format of information

Wherever possible, Coleg Gwent will provide information in the format requested. The FOIA states that information should be provided in a 'useable' format. The College will provide information as either:

- A copy in a permanent form
- A summary of the information
- An invitation to inspect the information in person (this may be the case if providing copies will result in a charge being made or a refusal on the grounds of the cost exceeding the appropriate limit).

14. Refusing a request - Exemptions under the FOIA

In the interests of openness and transparency, Coleg Gwent will, wherever possible, respond positively to requests for information. There will however be situations where it would be inappropriate to disclose information. The College will only refuse a request for information if one of the exemptions set out in the FOIA can be applied.

If a manager believes there is a strong case for not releasing information, they must liaise with the Governance Officer and CLT to establish if an exemption can be applied. The assumption should always be that information will be released and the onus is on the holder of the information to establish why it should not.

A total of 24 exemptions are listed in the FOIA and full details can be found on the Information Commissioner Office website. Those exemptions most likely to apply to information held by the college are listed below. When considering whether to refuse a

request for information, the College will take into account whether the exemption that applies is *Absolute* or *Qualified*:

- ***Absolute exemptions*** can be applied without the additional consideration of the 'Public Interest' test. The duty to confirm or deny if the information is actually held is also exempt (except in the case of Section 21 exemptions).
- ***Qualified Exemptions*** require the College to apply the *Public Interest Test* when making the decision whether or not to disclose information. This is a reasoned decision as to whether or not the best interests of the public will be served by withholding the information or through its disclosure. When issuing a refusal under a qualified exemption, the refusal notice will include an explanation of how the Public Interest Test has been applied.

The exemptions most likely to apply to information held by Coleg Gwent are:

(i) **Absolute Exemptions** (Public Interest Test does not need to be applied)

Section 21 - Information readily accessible to the applicant by other means: Coleg Gwent does not have to provide information if it can be readily accessed, for example, on the website. The duty to confirm or deny however does apply.

Section 40 - Personal information: Information relating to living, identifiable individuals is subject to the provisions of the Data Protection Act (2018) and the UK General Data Protection Regulation. If an individual is requesting information about themselves, this will be treated as a subject access request. All requests for personal information will be referred to the Coleg Gwent Data Protection Officer:

Email: DPO@coleggwent.ac.uk

Section 41 - Information provided in confidence: Information is exempt under the FOIA if it has been provided to the College by a third party with the reasonable expectation of confidentiality and where the disclosure of that information could reasonably be expected to result in the third party taking action against the College for breach of confidence.

Section 44 - Where a disclosure is prohibited by other legislation or by a court order.

(ii) **Qualified exemptions** (Public Interest Test must be applied)

Section 22 - Information intended for future publication: A request can be refused where the information is awaiting publication. The decision to publish must have been taken before the request was received and the timescale to publication must be 'reasonable'. This exemption also applies to information held by the College that may be awaiting publication by another organisation.

Section 31 - Information related to law enforcement and the prevention of crime: This exemption can apply to information that if released, could enable criminal activity to take place.

Section 36 - Information that may prejudice the conduct of public affairs: Where the release of information would adversely affect decision making, free and frank provision of advice or the effective conduct of the business of the College. The decision to refuse a request under this exemption can only be made by the Principal/Chief Executive who has

been appointed by Welsh Government Ministers as the ‘Qualified Person’ for the purposes of this section.

Section 42 - Information covered by legal professional privilege: This mainly (but not exclusively) applies to the College’s communications with its legal advisors.

Section 43 - Commercial Interests: This applies to trade secrets and information that would or is likely to, prejudice the commercial interests of the College or a third party. This could include information provided by other bodies which the College contracts to provide goods and services, or information provided during a tender process.

(iii) **Other reasons to refuse a request**

Vexatious requests: Where a request is designed to harass or waste the College’s time and resources, for instance where an orchestrated campaign of requests is made or where the request is clearly of no intrinsic value. Such requests can be difficult to identify and the College will consider such a refusal carefully, with recognition that an individual may submit a request in a state of anger or frustration and this in itself is not a reason to consider the request vexatious.

Repeated requests: Where repeated requests are received from the same individual or organisation for the same information. An identical request cannot be refused if it is from different requestors who are not obviously working together.

Lack of information: If a requester fails to provide further information to clarify their request when asked to do so by the Governance Officer, no further response will be sent.

Excessive Cost: Where the cost of providing the information is considered prohibitively expensive (see section 12)

15. Redaction of information

Redaction is the process whereby information is made unreadable or inaccessible within a document. This may involve blocking out individual words, sentences or whole blocks of text/images (either manually or electronically).

When deciding to withhold information, the College will consider the possibility of providing redacted copies of documents. Managers responsible for the information will work with the Governance Officer and Vice Principal to identify if redaction is a suitable course of action.

Redaction will only be used where an exemption can be applied to specific information contained in the document. The College’s response will state which exemption has been applied to each redacted section and where necessary, how the Public Interest Test has been applied.

Redaction may enable information to be released in part, however if the process results in the overall sense of the document being lost, or the document becoming difficult to read, then the College may decide the information will be withheld in full under the relevant exemption. The additional staff hours required to remove information will not be included when calculating charges for providing the information.

16. Environmental Information Regulations (EIR)

Under the EIR, the public has a right of access to environmental information held by public authorities. In accordance with the presumption of openness contained within the EIR, Coleg Gwent will aim to make a wide range of environmental information readily available, including on its website.

For the purposes of the EIR, 'environmental information' is information held by the College on:

- The state of the elements of the environment, including air, water, soil, land, fauna and humans;
- Emissions and discharges, noise, energy, waste etc.;
- Measures taken that directly affect the environment;
- Reports, cost-benefit and economic analyses relating to activities that impact the environment;
- The state of human health and safety or contamination of the food chain;
- Cultural sites and built structures (to the extent they impact the elements of the environment).

Generally, requests made for information that fall under the EIR will be treated in the same way as FOIA requests. Key differences are:

- A request does not need to be made in a written or recordable format; verbal requests are valid.
- There is a stronger emphasis on openness and transparency, but a number of exemptions can be applied; full details of these can be found on the ICO website.
- The Public Interest Test must be applied to all exemptions.
- The timescale is the same as for FOIA requests, with a greater emphasis on responses being sent as soon as possible, but within 20 working days.
- Charges can be made for information, but there is no set charge. Charges must be 'reasonable' and the College must not routinely charge for environmental information.

All requests for information under the EIR will be logged and responded to by the Governance Officer. Staff and Managers should follow the same procedure as for all other requests for information.

17. Contact details

The point of contact for requests under the FOIA and EIR and any matters in relation to this policy or the Coleg Gwent Publication Scheme, is the Coleg Gwent Governance Officer:

Marie Carter
Governance Officer
Coleg Gwent
The Rhadyr
Usk
NP15 1XJ

Tel: 01495 333519
Email: marie.carter@coleggwent.ac.uk

18. Complaints

Informal complaint

Coleg Gwent aims to handle all requests for information in line with this policy and will seek to resolve complaints on an informal basis wherever possible.

If a requestor is unhappy with the response they receive, they should contact the Governance Officer in the first instance. The Governance Officer will respond to complaints as soon as possible, and within 20 working days.

Formal complaint

If a requestor remains unhappy after making an informal complaint, they can make a formal written complaint addressed to: the Data Protection Officer, Coleg Gwent, The Rhadyr, Usk NP15 1XJ. Email: DPO@coleggwent.ac.uk

A complaint may be passed to a more senior member of staff, and if appropriate, the Principal will arrange an independent investigation. A response to the complaint will be issued within 20 working days.

Information Commissioner's Office

The Information Commissioner's Office is the independent body that oversees the implementation of the FOIA and EIR in the UK. If a requestor remains unhappy with the response they have received after pursuing the Coleg Gwent internal process for complaints, they may complain directly to the ICO:

Information Commissioner's Office - Wales
2nd Floor, Churchill House
Churchill Way
Cardiff
CF10 2HH

Email: wales@ico.org.uk
Tel: 0330 414 6421

Website: www.ico.org.uk