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Metropolitan
University

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Access to Information Guide



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INTRODUCTION

Three main pieces of legislation allow access to the information held by Cardiff Metropolitan University:

- Data Protection Act 1998 (DPA)
- Environmental Information Regulations 2004 (EIR)
- Freedom of Information Act 2000 (FOIA)

The DPA aims to protect individuals from unwanted or harmful uses of their personal data, by ensuring that organisations collect, use and destroy this type of information in a responsible and accountable fashion. The FOIA and EIR are intended to help to make the public sector more open and accountable by allowing members of the public to scrutinise the decisions of public authorities and the services they provide more closely.

Any request for information is technically a request under the FOIA in the first instance. The FOIA, however, contains an exemption relating to environmental information, allowing requests for this type of information to be dealt with under the EIR, and another to allow requests for 'personal' information about the person making the request to be dealt with under the DPA. If a request is made for more than one type of information, it can be dealt with partly under one piece of legislation and partly under another, or indeed under all three. In practice, the three pieces of legislation will work together:

- The Data Protection Act will allow access to personal information about the person making the request
- The Environmental Information Regulations will allow access to environmental information
- The Freedom of Information Act will allow access to all other information

The two Acts and the Regulations may also need to be considered along with other legislation (such as the Disability Discrimination Act, the Human Rights Act, etc).

The Information Commissioner is responsible for overseeing and enforcing the DPA, the EIR and the FOIA.

FURTHER INFORMATION

The first point of contact for information and advice within Cardiff Met is the Senior Officer in the Secretariat Unit.

The texts of the two Acts and the Regulations are available at www.opsi.gov.uk/legislation/index.htm.

Information and guidance is available externally on the following websites:

- The Information Commissioner – www.informationcommissioner.gov.uk
- Ministry of Justice – www.justice.gov.uk
- Joint Information Systems Committee (JISC) – www.jisclegal.ac.uk

DATA PROTECTION ACT 1998

Introduction

The Data Protection Act (DPA) received Royal Assent in July 1998 and came into force on 1 March 2000. The Act applies to the 'processing' of 'personal data' in a 'relevant' filing system. Organisations must:

- Notify the Information Commissioner that they intend to process personal data
- Comply with the data protection Principles, including
 - Comply with one of six conditions to process personal data
 - Comply with one further condition to process sensitive personal data

Failure to comply with the Act can lead to civil or criminal action, which could be directed against Cardiff Met or against individuals within the university.

Definitions

- 'Processing' includes collecting, recording, organising, holding, storing, retrieving, consulting, using, disclosing and destroying
- 'Personal data' must relate to a living individual – it should also be 'biographical in a significant sense', going beyond a mere record of the involvement of a named individual, and should have the individual as the focus of the information
- 'Sensitive personal data' includes information on ethnic origin, political opinion, religious beliefs, trade union membership, physical or mental health, sexual life or criminal history
- All computer systems are classed as 'relevant filing systems', as are some very structured manual systems

Principles

All processing of personal data needs to be in accordance with the eight data protection Principles:

- Processing must be 'fair and lawful'
 - The person must be informed about the processing, unless that information is readily available or the use is obvious
 - Processing must be necessary for the stated purposes of the organisation, unless consent is obtained
- Data should be collected for 'specified and lawful purposes' and the processing should be compatible with these purposes
- Personal data should be 'adequate, relevant and not excessive' in relation to the purposes for which it is processed
- Data must be accurate and up to date
- Data should not be kept longer than is necessary to achieve the stated purposes
- Processing should be in line with the rights of the individual – an individual has the right to know if personal data is held, for what purposes and to see a copy of the data
- 'Appropriate technical and organisational measures' should be taken against unauthorised or unlawful processing and against accidental loss, destruction or damage to the data
- Personal data should not be transferred outside the European Economic Area, unless certain conditions are fulfilled

Subject Access Requests

All individuals have the right of access to any or all personal data about themselves, if it is covered by the Act, held by Cardiff Met. This right of access is subject to proof of identity and payment of a fee. Cardiff Met may request more information in order to locate the data requested and will normally need to respond within 40 days. Individuals also have the right to object to the processing and may be able to claim compensation.

The Act relates to information rather than to specific files or documents and it may be appropriate to supply copies of the original material or to produce a fresh record in order to remove exempt information.

Further information about making a Subject Access Request to Cardiff Met can be found on the Secretariat website or can be obtained by contacting the Senior Officer.

Exemptions

Certain information is exempt from this right of access:

- Information on the health of the individual, if disclosing the information would cause harm to the individual
- Information processed for journalistic, literary or artistic purposes
- Information processed only for research, statistical or historical purposes – if the data is anonymous
- References – the referee is exempt, if the reference was given in confidence, but the organisation receiving the reference may be required to disclose
- Examination marks – disclosure can be delayed until after the results are announced
- Examination scripts – personal data recorded by candidates is exempt but examiners comments (recorded on the script or in another place) are not and neither are the minutes of Examination Boards

If the requested information includes the personal data of another individual this individual also has rights under the Act and it may be reasonable to refuse to disclose the information.

Third Party Data

Personal information should not normally be disclosed to a third party, although a disclosure may be made if there is no breach of the DPA, including in the following circumstances:

- To protect the vital interests of the individual
- To prevent serious harm to a third party
- To prevent or detect crime
- To apprehend or prosecute offenders
- To discharge any regulatory function, including health and safety
- If disclosure is required by legislation, law or court order

For advice before making any disclosure please contact the Senior Officer.

ENVIRONMENTAL INFORMATION REGULATIONS 2004

Introduction

The Environmental Information Regulations (EIR) came into force on 1 January 2005. They apply to environmental information that is 'held' by 'public authorities' (as defined by the Freedom of Information Act (FOIA) and including colleges and universities) as well as certain other organisations. They are not restricted to organisations that have an environmental responsibility. An organisation that is subject to the EIR has two main responsibilities:

- To disseminate a minimum amount of information, possibly by means of its FOIA Publication Scheme
- To handle individual requests for access to 'recorded' environmental information that is 'held' by the authority – subject to exceptions

The EIR are supported by a Code of Practice and Cardiff Met is expected to abide by this Code, unless it has a good reason for not doing so. That reason may need to be justified to the Information Commissioner. A charge may be made to supply the information that has been requested, unless the applicant agrees to inspect the information on campus.

Environmental Information

The definition of 'environmental information' in the EIR is very broad and covers not only the facts but also opinions and advice, as well as details of how the information was obtained and guidance on its accuracy. Environmental information would include:

- Information on the state or condition of parts or elements of the environment – air (including air within buildings and air conditioning systems), atmosphere, water (including water table and sewage) soil, land (including buildings), landscape and natural sites, biological diversity and its components, flora and fauna, crops, wildlife. Information on the interaction among these elements
- Factors that affect or are likely to affect the elements of the environment listed above – including substances, energy, noise, waste, emissions, discharges, energy, radiation, etc. The applicant may also need to be given or direct to information on the measurement procedures used, including the method of analysis and the methods used in sampling or pre-treatment.
- Measures and activities (including purely administrative measures) affecting or likely to affect the parts of the environment or the factors listed above – including measures and activities designed to protect the environment. This would include policies, legislation, plans, programmes, environmental agreements, activities, etc as well as any cost-benefit or other economic analysis of these measures and activities
- Reports on the implementation of environmental legislation
- Information on the state of human health and safety – including information on the condition of human life, information on the food chain (including contamination) and cultural sites or built structures (including roads and infrastructure) that are or may be affected by any of the elements, factors, measures or activities listed above

The information may relate to anywhere in the world.

Requests

From January 2005 any person or organisation from anywhere in the world can request any environmental information from Cardiff Met. They do not need to cite the EIR or give a reason for the request. Cardiff Met may ask for more details in order to locate the information requested. Unlike the FOIA, the request may be either verbal, written, or by some other means of communication, such as sign language. The university has 20 working days to respond and can, exceptionally, take another 20 days to comply with complex and voluminous requests.

Cardiff Met also has a duty to provide advice and assistance to those who have made, or who want to make, a request.

Information is covered by the EIR if it has been 'recorded' (whether electronically, on paper, visually, aurally, etc), and does not need to be in a structured filing system to be covered. The EIR do not restrict the information that may be requested to the current or most recent version and are, therefore, fully retrospective. The EIR covers all the information that was 'created; or 'received' by, or on behalf of, Cardiff Met and, unlike the FOIA, information held by Cardiff Met on behalf of another person or body. It also follows that other public authorities will be under an obligation to disclose any information that they have received from Cardiff Met. The information must be 'held' at the time the request is received, so there is no obligation to supply information that has been legitimately destroyed. It is, however, an offence to alter or destroy information, once a request has been received, in order to avoid making it available.

Exceptions

Like the exemptions in the FOIA, the exceptions allow Cardiff Met to refuse to confirm or deny that it holds the information and allows the information that is the subject of a request to be withheld. In each case the university would have to explain which exception it was claiming and why it is in the public interest to refuse the request.

The exceptions include:

- Information that is not 'held' when the request is received
- If the request is 'manifestly unreasonable'
- If the request is too general – although the applicant must be given the chance to clarify the request
- Information or data that is incomplete, unfinished or in the course of completion
- If the request involves internal communications

Cardiff Met may also refuse to disclose information if any of the following would be adversely affected:

- Public safety
- The ability of Cardiff Met to conduct a disciplinary inquiry
- Intellectual property rights
- Confidentiality (if provided for by law)
- Confidentiality of commercial information (if provided for by law and used to protect an economic interest)
- The interests of the person who provided the information
- The protection of the environment to which the information relates

FREEDOM OF INFORMATION ACT 2000

Introduction

The Freedom of Information Act (FOIA) received Royal assent in November 2000 and came fully into force in January 2005. It applies to 'public authorities' (the definition of which includes colleges and universities) as well as to companies that are wholly owned by a public authority. An organisation that is covered by the FOIA has two main responsibilities:

- To produce, publish and periodically review a 'Publication Scheme' that lists the information (rather than documents) that is 'routinely' made available to the public
- To handle individual requests for access to any 'recorded' information that is 'held' by the authority – subject to exemptions

The FOIA is supported by two Codes of Practice relating to how records are managed and to the handling of requests. There are separate Regulations outlining the fees that can be charged.

Cardiff Met Publication Scheme

Cardiff Met has adopted the Model Publication Scheme developed by the Information Commissioner's Office and is committed to making available the information outlined in the Definition Document for universities. In order to operate the scheme we have also produced a Guide to Information, which lists the information that is available through the scheme. Cardiff Met's Guide to Information is our external website. Most of the information we make available can be accessed directly from our website. Where information is only available on request our website includes details of the information and how it can be accessed – this information mostly appears on the Secretariat section of the website (<http://www.cardiffmet.ac.uk/about/structureandgovernance/Pages/Freedom-of-Information-.aspx>). Information that is available on request needs to be supplied within five working days. Any information can be requested, and would need to be supplied, as a hard copy. Schools and Units are responsible for making sure that relevant information is kept up to date and that any new information is made available. The Secretariat Unit will carry out a regular review of the scheme.

Publication Schemes are also available for the companies that are wholly owned by the university.

Requests

From January 2005, any person or organisation from anywhere in the world can request any information from Cardiff Met and has two rights:

- To be told if the university holds the information
- To have the information communicated to them – where possible in the manner requested

The person making the request does not need to cite the FOIA or give a reason for the request. A request must be made in writing (whether by letter, email, etc) and needs to include contact details and a description of the information requested. Cardiff Met will normally have 20 working days to respond and may ask for more details in order to locate the information requested. There is no obligation to respond to 'vexatious' or 'repeated' requests.

Cardiff Met also has a duty to provide advice and assistance to those who have made, or who want to make, a request.

Information is covered by the FOIA if it has been 'recorded' (whether electronically, on paper, visually, aurally, etc) and does not need to be in a structured filing system. The FOIA does not restrict the information that may be requested to the current or most recent version and is, therefore, fully retrospective. The FOIA covers all the information that was 'created' by, or on behalf, of Cardiff Met as well as information that was created by another person or organisation and that has been 'received' by, or on behalf, of Cardiff Met. It also follows that other public authorities will be under an obligation to disclose any information that they have received from Cardiff Met. The information must be 'held' at the time the request is received, so there is no obligation to supply information that has been legitimately destroyed. It is, however, an offence to alter or destroy information, once a request has been received, in order to avoid making it available.

The FOIA relates to information not publications or documents, although, in many cases, it may be that a document will be supplied in response to a request. The applicant may request a copy of the information, a chance to inspect the information or a summary of the information. Cardiff Met must comply with this request if doing so is 'reasonably practicable'.

Exemptions

There are a number of exemptions to both the duty to confirm or deny that Cardiff Met holds the information and the duty to make it available. The 'absolute' exemptions include:

- Information accessible to the applicant by other means
- Personal information (mostly 'absolute')
- Information provided by a third party, the disclosure of which would constitute an actionable breach of confidence
- If disclosure is prohibited by any enactment or would constitute a contempt of court

If information falls under a 'qualified' exemption Cardiff Met must not only decide if the exemption is applicable but also if it is in the 'public interest' to maintain the exemption. The qualified exemptions include:

- Information intended for future publication
- Certain investigations and proceedings
- Information relating to law enforcement – including information that would prejudice the prevention of crime
- Information that would prejudice the effective conduct of public affairs
- Health and safety
- Environmental information – handled under the Environmental Information Regulations
- Commercial interests – information that would give a person or organisation a commercial advantage over its competitors