



# **DURANTS SCHOOL – POLICY DOCUMENT**

## **“Durants Data Protection Policy ”**

**2020**

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# 1. Introduction

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Durants is committed to transparency in its dealings with the public and fully embraces the aims of the Freedom of Information Act 2000 and the access provisions of the Data Protection Act 2018. Durants will make every effort to meet its obligations under the respective legislation and will regularly review procedures to ensure that it is doing so.

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

Separate guidance, in the form of operating procedures, has been given to staff in the staff handbook on how to handle information requests received under the FoIA regime

## **2. Background**

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The Data Protection policy 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, subject to certain exemptions, within twenty working days. The Act 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 the Act also obliges Durants 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 DPA. Individual access rights to personal data are extended by the FoIA through amendments to the access provisions of the DPA.

The EIR provides a statutory right of access to “environmental information”, as defined in these regulations. The EIR came into force on 1st January 2005 and replaces the existing 1992 Regulations. The EIR are also fully retrospective.

The Government’s Information Commissioner enforces these three information regimes.

Each regime contains certain categories of exempt information, where information can be withheld. Any decision to withhold information under an exemption can be referred by the applicant to the Information Commissioner, who can overturn any decision to withhold information. For the purposes of this policy, the “public” is defined as any individual or organisation anywhere in the world and an “information request” refers to any request for recorded information made under the FoIA, EIR or DPA.

## **3. Timescales**

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Freedom of Information requests should be dealt with within 20 working days, excluding school holidays.

Requests for Data Protection (subject access requests) should be dealt with within 30 calendar days. Requests for pupil education records should be dealt with within 15 school days.

## **4. Delegated responsibilities**

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Overall responsibility for ensuring that Durants meets the statutory requirements of the FoIA, EIR and DPA lies with the Head teacher and the Chair of Governors has overall responsibility for information management issues. They have delegated the day-to-day responsibility of implementation to the Chief Executive Officer.

The Chief Executive Officer is assisted by the Chief Financial Officer who currently fulfils the role of ‘FoI officer’. All staff are responsible for ensuring that they handle requests for information in compliance with the provisions of the various Acts, taking advice from the FoI officer where necessary.

The Education Data Protection Officer Service can provide advice for any exemptions or clarity for adequate responses.

## 5. Scope

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This policy applies to all recorded information held by Durants that relates to the business of Durants. This includes:

- Information created and held by Durants
- Information created by Durants and held by another organisation on our behalf
- Information held by Durants provided by third parties, where this relates to a function or business of Durants (such as contractual information) and
- Information held by Durants relating to Directors where the information relates to the functions or business of Durants

This policy does not cover personal written communications (such as personal e-mails sent by staff). Durants's Data Protection Policy establishes the standards regarding the use of "personal data" (as defined in the DPA).

## 6. Requesting information

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### 6.1 Procedures

Practical procedures for handling information enquiries in line with the relevant legislation will be produced and copies can be obtained from Durants's FoI Officer. Durants has a duty under both the FoIA and EIR to provide advice and assistance to applicants making information requests. This includes assisting the applicant in making the application for information. Although no such duty exists under the DPA, the same level of care will be provided.

### 6.2 Charges

The three information regimes contain different provisions that permit charges to be made for responding to information requests. The Governing Body may charge a fee for complying with requests, as calculated in accordance with FoIA regulations. If a charge is to be made, Durants will give written notice to the applicant before supplying the information requested. Durants will only charge for the cost of copying and transmitting information, not for time taken in reaching decisions regarding whether information is covered by an exemption. Where Durants estimates that the cost of locating the information will exceed the statutory threshold of £450, it will consider whether or not to comply with the request. Durants is not obliged to comply with such a request but may choose to do so. The Data Protection Act 2018 does not permit a charge to be made for responding to requests for personal data.

### 6.3 Publication

Section 19 of the FoIA obliges Durants to make information pro-actively available in the form of a "publication scheme". This scheme will list categories, or "classes" of information that will routinely be made

available without the need for a specific information request. Durants will indicate in the scheme where it wishes to charge for providing particular categories of information. The scheme is published on Durants' website.

Durants plans to review this scheme regularly. Whenever any information is provided in response to a recorded FoIA enquiry, Durants will assess whether the information is suitable for wider publication. In general, there will be a presumption in favour of publishing such information on Durants' website.

## 7. Withholding Information

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The Freedom of Information Act contains 23 exemptions whereby information can be withheld. There are two categories; absolute and non-absolute. Durants will only withhold information if it falls within the scope of one or more of these exemptions. Where an absolute exemption applies, Durants can automatically withhold the information. However, where the exemption is non-absolute the information can only be withheld where Durants decides that the public interest is best served by withholding the information. Certain exemptions also contain a "prejudice test", which means that the exemption can only be claimed if disclosing the information would prejudice the interest protected by the exemption. Durants will only withhold information covered by the exemption. Complete files or documents will not be withheld just because part of the information is covered by an exemption. Durants will only apply an exemption where it has reason to believe that prejudice might occur to the interest protected by the exemption. In addition, wherever a "public interest" exemption is being considered, Durants will only withhold that information which it can demonstrate that the public interest will be best served by withholding. When considering withholding information under a non-absolute exemption Durants will take into account whether the release of the information would:

- promote further understanding of current issues of public debate;
- promote the accountability of decisions taken by Durants and the spending and allocation of public money;
- bring to light matters of public safety;
- allows the public to understand and challenge decisions made by Durants ;
- be otherwise in the public interest.

Where information is withheld under an exemption in most cases the reason behind the decision will be made clear to the applicant, citing the exemption under which the information is being withheld. The applicant will also be given details of the right to challenge the decision through Durants' Governing Body and the right of appeal to the Information Commissioner's Office.

Where a staff member plans to apply an exemption, he / she will consider whether other Academy's hold similar information. If this is considered likely, he / she may contact the relevant Academy(s) to ensure that a consistent response is provided to the applicant.

Durants will also refuse to supply information under the FoIA, where the request is considered "vexatious" or "repeated" and under the EIR, where the request is considered 'manifestly unreasonable'.

## **8. Releasing a third party's information**

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Where, in response to a request, information belonging to a third party (either an individual or other organisation) has to be considered for release, the staff member that received the request will seek input from the FoI officer prior to the release of the information.

The release of third party information will be considered carefully to prevent actions for breach of confidence or, in the case of living individuals, breaches of the DPA. Both the EIR and FoIA permit information to be withheld when its release would breach the provisions of the DPA.

When the requested information relates to a living individual and amounts to “personal data” as defined in the DPA, its disclosure could breach the DPA. Therefore, the release of third party personal information relating to living individuals will be considered in accordance with the data protection principles and, in particular, the “third party” provisions of the DPA.

Where appropriate, Durants will contact the individual to ask for permission to disclose the information. If consent is not obtained, either because it was not considered appropriate to approach the third party or the third party could not be contacted or consent is refused. Durants will then consider if it is reasonable to disclose the information, taking into account:

- any duty of confidentiality owed to the third party
- the steps taken to seek consent
- whether the third party is able to give consent and
- any express refusal of consent

The decision to disclose third party information will also take into account the impact of disclosure on the third party, relative to the impact on the applicant of withholding the information. Where the third party has been acting in an official, rather than private capacity, Durants will be minded to disclose the information, although decisions will be made on a case by case basis.

Where the information relates to a staff member, the provisions of the DPA will still apply in many circumstances but the nature of the information will influence Durants' decision whether to release the information.

Where the information relates to a matter clearly private to the individual, e.g. a disciplinary hearing, the information will almost certainly be withheld. However, where the information relates to the member of staff acting in their official capacity, e.g. an expenses claim, the information will normally be released. The exemption relating to the release of a third party's

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personal data will not be used to withhold information about administrative decisions taken by Durants .

As the DPA only relates to living individuals, the exemption relating to Data Protection under both the EIR and FoIA will not apply to information held about the deceased. Where the request might be controversial, the staff member will seek input from the FoI officer who will take advice from the Governing Body where necessary.

Where the third party is an organisation, rather than an individual, the provisions of DPA 2018 will not apply. Durants will consider consulting the third party concerning the release of their information where:

- the views of the third party may assist Durants to decide whether an exemption under the Act applies to the information and
- in the event of the public interest test being applied, where the views of the third party may assist Durants to make a decision relating to where the public interest lies
- Consultation will not be undertaken where:
- Durants will not be disclosing the information due to some valid reason under the Act
- Durants is satisfied that no exemption applies to the information and therefore cannot be withheld and
- the views of the third party will have no effect on the decision e.g. where there is other legislation preventing disclosure

Where input from a third party is required, the response time for the request remains the same. Therefore, it will be made clear to the third party at the outset that they have a limited time for their views to be provided and that where responses are not immediate, the decision to disclose may have to be made without their input in order for Durants to comply with the statutory time limits dictated by the legislation.

Durants will endeavour to inform individuals and organisations submitting information that the information might be released following an information request and, where appropriate, will provide the supplier of the information opportunity to request confidentiality or supply reasons as to why the information should be treated confidentially.

## **9. Information held within contracts with Durants**

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Any contractual information, or information obtained from organisations during the tendering process, held by Durants are subject to the provisions of the FoIA and EIR. Whenever Durants enters into contracts, it will seek to exclude contractual terms forbidding the disclosure of information beyond the restrictions contained in the legislation. A standard form of wording will be

included in contracts to cover the impact of FoIA and EIR in relation to the provision of information held in contracts.

Durants can withhold contractual information where its disclosure under either the FoIA or EIR could be treated as actionable breach of confidence. Where Durants intends to include nondisclosure provisions in a contract, it will agree with the contractor a schedule of the contract that clearly states which information should not be disclosed.

Durants will only agree to enter into confidentiality clauses where the information is confidential in nature and that it is confident that the decision to restrict access to the information could be justified to the Information Commissioner.

Where information is not covered by the exemption relating to information accepted in confidence, a further exemption specifically under FoIA may be relevant, relating to commercial interests. This exemption is subject to a “public interest” test. Whenever Durants has to consider the release of such information, it will contact the relevant organisation to obtain its opinions on the release of the information and any exemptions they may think relevant. However, Durants will make the final decision relating to the disclosure of the information.

Durants can also withhold information contained in contracts where any of the other exemptions listed in the FoIA or EIR are appropriate, although information will only be withheld in line with Durants ’s policy on the use of exemptions. All future contracts should contain a clause obliging contractors to co-operate fully and in a timely manner where assistance is requested in responding to a FoIA or EIR request.

## **10. Complaints procedure**

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Whenever Durants withholds information under an exemption, or for any other reason, it will inform the applicant of their right to complain about the decision through Durants ’s complaints procedure and of the right of appeal to the Information Commissioner. Any complaint received will be dealt with in accordance with Durants ’s complaints procedure as detailed in its Complaints Policy. If the result of the complaints is that any decision to withhold information be overturned, this information will be supplied as soon as it is possible.

## **11. Requests made under the Data Protection Act**

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The Data Protection Act 2018 entitles an individual to his or her ‘personal data’, as defined in that Act, where the information is held on an automated system, such as a computer and also manual files, where they amount to what the DPA describes as an “accessible record” or in a structured filing system, defined in the DPA as a “relevant filing system”.

The parental right to receive information pertaining to the “educational record” of their child should continue to be administered under the Education (Pupil Information) (England) Regulations 2000. Whenever a request for personal data is received and is not covered by these regulations, the request will be administered in accordance with the relevant section of Durants’ s FoIA operating procedures.

Whenever a request is made under the DPA for personal data, Durants will provide the applicant with the relevant information contained within files relating to that individual that is accessible under both the DPA and FoIA, subject to any exemptions.

Where it is not possible to remove third party information without rendering the response useless to the individual, the provision of third party information will be considered in line with section 7 of this policy regarding the disclosure of third party information. The DPA contains the provision for numerous types of exemption.

Therefore, whenever a member of staff is considering applying an exemption, he/she will seek the opinion of the FoI officer.

## **12. Illegal actions**

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It is a criminal offence under any of the three information regimes for members of staff to alter, deface or remove any record (including e-mails) following receipt of an information request. Both the FoIA and EIR contain specific provisions to make such action a criminal offence.