

## Policy for responding to Requests for Records Administrative Access, Data Protection Acts & Freedom of Information Act

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## **Section 1**

### **Introduction**

This policy sets out how Laois and Offaly Education & Training Board (LOETB) will manage requests for access to records held or created by LOETB in the course of the performance of their functions.

Under Administrative Access all appropriate information will be made available to the requester having regard to privacy, confidentiality and the public interest. As a matter of policy LOETB supports a client's right to see what information is held about them within its service. Generally, access to a person's own information should be provided administratively (subject to certain exceptions).

LOETB will comply fully with their legal obligations under the Data Protection Acts 1988 & 2003 and also under the Freedom of Information Act 2014.

### **Purpose of Policy**

The purpose of this policy is to set out how LOETB will respond to requests for access to records. There are a number of ways in which individuals may seek access to records held by LOETB and these include:-

- Under LOETB's Administrative Access Policy
- Under the Data Protection Acts 1988 & 2003 (referred to as DP Act)
- Under the Freedom of Information Act 2014 (referred to as FOI Act)
- Under an Order for Discovery from the Courts
- By Court Order

LOETB will also consider requests from third parties in appropriate circumstances including but not limited to the following:-

- Requests from Solicitors acting on behalf of an individual
- Requests from An Garda Síochána
- Requests for access to children's records or an incapacitated person's records by a parent or guardian
- Requests for a deceased person's records.

## Section 2

### Definitions

<b>Word or Phrase</b>	<b>Meaning for the purpose of this policy</b>
Administrative Access	Routine access provided to certain records in appropriate circumstances as defined by this Policy
Client	A student or any person availing of any of the LOETB services
Decision Maker	Staff member(s) delegated the function of processing requests for access to LOETB records
DP Act	Refers to the Data Protection Acts 1988 & 2003
Employee	A person who is or was a staff member in LOETB, e.g. a Teacher, Special Needs Assistant, Administrative Officer. A person who is or was contracted to work for LOETB
FOI Act	Refers to the Freedom of Information Act 2014
Personal information	Information about an identifiable individual (living or dead) that would normally only be known to the individual, members of their family and/or close friends and is held by LOETB on the understanding that it would be treated as confidential. Examples of personal information held by LOETB include name, address, date of birth, educational history, etc. For staff members of LOETB this may include their employment history, bank account details, pay details, employee performance details, disciplinary records, etc.
Research Officer	Staff member(s) working with the Decision Maker to prepare the files that are the subject of an access request
Schedule of records	This is a detailed list of the content of a file which provides a description of each page and the decision as to whether to release, part-release or withhold
Sensitive Personal Information	Information relating to the physical or mental health of an individual, religious beliefs, trade union membership, Garda Vetting information, etc.
Third party requests	This is when a request for access to personal records is received from somebody who is not the subject of the records, e.g. a Solicitor acting on behalf of the person; a family member, next of kin or advocate of the person; An Garda Síochána; a parent seeking access to their child's records; a request for access to a deceased person's records

## **Section 3**

### **APPLYING FOR ACCESS TO RECORDS**

#### **Personal Information**

Applications to access records must be received in writing, please see “Request to Access Records from LOETB” form on our website (foi@laoisoffalyetb.ie). Should the requester contact a staff member of LOETB either in person or by telephone, every effort should be made to assist the requester in making their request. The requester should provide sufficient information to assist in locating files, including date of birth, current and previous addresses, and details of the contacts with LOETB, for example if it is a student, the school attended and approximate dates. If the requester is not known to you it may be necessary to request proof of identity, for example providing a copy of current passport or driver’s license.

#### **Non-Personal Information**

LOETB will endeavour to make available to the public up to date details of the policies and procedures under which it operates. This information will be published on our website and may also be made available to individuals on request. A requester may seek access to non-personal information and LOETB will process this request under this policy.

#### **Exceptions**

Where access to a record or information cannot be provided directly under Administrative Access, the requester should be informed of this and advised of the option of making an application under the DP Acts or FOI Act. The Research Officer or Decision Maker will assist the requester to make their request and to ensure it is dealt with under the most appropriate policy.

All FOI requests, on receipt, must be copied to:-

#### **Other Mechanisms for Access to Records**

There are a number of other ways for individuals to access records including but not limited to:-

- Court Subpoena
- Search Warrant
- Court Orders
- Investigations by An Garda Síochána
- Request and/or Investigation by the Information Commissioner or Ombudsman
- By an Officer authorised in writing by the Minister.

## **Section 4**

## **PROCEDURES FOR HANDLING REQUESTS UNDER ADMINISTRATIVE ACCESS POLICY**

This section of the policy should be used when the record is being **released in full** to the requester.

<b>Stage of Process</b>	<b>Action required</b>	<b>Time frame</b>
Step 1	Request received	
Step 2	Date stamp request	Immediately
Step 3	Forward to Decision Maker	As soon as possible
Step 4	Check validity of request	As soon as possible
Step 5	Acknowledge request	Within 3 days of receipt of valid request
Step 6	Gather records	As soon as possible
Step 7	Determine records to be released	Within 15 days of receipt of valid request
Step 8	Issue decision	Within 15 days of receipt of valid request

### **Step 1: Request received to access records**

Requests may be received in writing, by telephone, by presenting to any LOETB office or location, email, fax or any other form. For requests received by telephone or in person, the requester should be asked to confirm their request in writing and to provide copy of identification where appropriate. Details such as name, address, date of birth and contact details should be included along with details of the records sought.

**Step 2: Date stamp requests**

Requests for access to records should be date stamped by the department or office who receives the request; this can be any department or office in LOETB.

**Step 3: Forward request to the appropriate Decision Maker for processing**

Each School and Training Facility should have a nominated person for dealing with routine access requests. This can be the same person who processes Data Protection Access Decisions.

**Step 4: Check validity of request**

If requester is not known to you, seek a copy of some form of identification, e.g. copy of driving license or passport. The requester should provide sufficient information to enable the Decision Maker identify the records sought. If the information provided is insufficient, contact requester immediately to clarify request. Advise requester that the response deadline only applies once request is valid, i.e. once ID and clarification of records sought is received.

**Step 5: Acknowledge receipt of the request and advise date response due**

Requests should be acknowledged within 3 working days and responses should be issued within 15 working days of receipt of request. If additional time is required, the Decision Maker should write to the requester and inform them of the expected response date. The letter of acknowledgement should detail the contact details of the Decision Maker and the date by which the requester can expect to receive the response.

**Step 6: Gather records that fall within the scope of the request**

The records should be numbered (on the original file) or printed out and numbered so that the sequence of the records is clear.

**Step 7: Determine whether records fall to be released in full**

This requires the Decision Maker to read each page/entry in the records and make a decision as to whether it is appropriate to release or not. Where the requester is the subject of the records every effort should be made to provide full access to the requester records. See also "When Administrative Access is not appropriate" for further details.

**Step 8: If records for full release, copy records and release the copy to requester**

Each request requires a formal decision letter to issue along with a copy of the records. The decision letter should include the contact details of the Decision Maker should the requester have any further queries in relation to their request.

The requester should be offered an opportunity to collect the records. If this is not possible or practical then the records should be put in a sealed envelope, clearly addressed with "return to sender" information on the outside of the envelope and a cover note confirming full release.

**If some or all of the records are not being released refer to other Sections of this policy as appropriate.**

## **Section 5**

### **WHEN ADMINISTRATIVE ACCESS IS NOT APPROPRIATE**

The Decision Maker should not process a request under Administrative Access if the records contain the following types of information:-

- Information that may be prejudicial to the physical or mental well-being or emotional condition of the requester
- Information obtained in confidence from a third party
- If the requester is not the subject of the record, i.e. third party requests (except in certain circumstances)
- The request is for access to the records of a person who is deceased
- Documents about suspected or actual child abuse
- If release would endanger the life or health of an individual (including a staff member)
- Legal professional privilege
- Records that are the subject of an ongoing Garda investigation
- Records that are the subject of a Court Order or Order for Discovery
- And certain other circumstances that may arise from time to time.

Where the records requested contain such information, the request should be processed under either the Data Protection Acts or the FOI Act; please see appropriate sections below. It is the responsibility of the Decision Maker to ensure that a request is processed under the most appropriate access policy; the Decision Maker should advise the requester of the policy being used and the relevant timeframes and appeal rights. If the access regime being used is different from that originally requested, the Decision Maker should explain their decision to the requester and quote the relevant sections of this policy.

## **Section 6**

### **PROCEDURE FOR HANDLING THIRD PARTY ACCESS REQUESTS**

This section of the policy should be used to process requests from third parties, i.e. the requester is not the subject of the records being sought.

#### **Requests from a Solicitor acting on behalf of a client**

##### **Steps 1 to 3 as above**

##### **Step 4: Check validity of request**

Ensure that the request contains the written consent of the client to release the records to the Solicitor. If consent is not included, contact the Solicitor and advise that written consent is required to process the request. Once written consent is received, proceed with the request.

##### **Steps 5 to 8 as above**



## **Requests from An Garda Siochana**

### **Steps 1 to 3 as above**

#### **Step 4: Check validity of request**

Ensure that the request contains the written consent of the client to release the records to An Garda Siochana. If consent is not included, contact the Garda and advise that written consent is required to process the request. Once written consent is received, proceed with the request.

If An Garda Siochana advise that consent is not appropriate, then their request must be made under Section 8 of the Data Protection Acts 1988 & 2003. This requires An Garda Siochana to make their request in writing and stating why the records are required.

Section 8 provides for the disclosure of personal data in certain cases where the record is required for the following purposes:

- (a) Safeguarding the security of the State,
- (b) Preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of those restrictions would be likely to prejudice any of the matters aforesaid,
- (c) In the interests of protecting the international relations of the State,
- (d) Urgently to prevent injury or other damage to the health of a person or serious loss of or damage to property,
- (e) By or under any enactment or by a rule of law or order of a court,
- (f) For the purposes of obtaining legal advice or for the purposes of, or in the course of, legal proceedings in which the person making the disclosure is a party or a witness,
- (g) Made at the request or with the consent of the data subject or a person acting on his behalf.

#### **Step 5: Acknowledge receipt of the request and advise date response due**

Requests should be acknowledged within 3 working days and responses should be issued within 15 working days of receipt of request. If additional time is required, the Decision Maker should write to the Gardaí and inform them of the expected response date. The letter of acknowledgement should detail the contact details of the Decision Maker and the date by which the Gardaí can expect to receive the response.

#### **Step 6: Gather records that fall within the scope of the request**

The records should be numbered (on the original file) or printed out and numbered so that the sequence of the records is clear. It may be appropriate at this stage to invite An Garda Siochana to view the records held on the client and for them to identify the particular records required for their stated purpose(s).

#### **Step 7: Release required records to An Garda Siochana**

Ensure that a copy of the request along with a copy of the decision letter and a detailed schedule of records released is retained on the client file for future reference.

## **Requests for access to children's records or an incapacitated person's records by a parent or guardian**

Requests for access to a child's record or that of an incapacitated adult by a parent or guardian should be carefully considered; decisions made to release such records must always be in the best interests of the child or incapacitated adult. Consideration of such requests should be in accordance with the Guidance Notes issued under Section 37 of the FOI Act 2014.

### **Steps 1 to 6 as above**

#### **Step 7: Determine whether records fall to be released in full**

This requires the Decision Maker to read each page/entry in the records and make a decision as to whether it is appropriate to release or not. Where the requester is a parent or guardian and the client is a child or incapacitated person, every care must be taken to ensure that release is in the best interests of the client.

This requires the Decision Maker to consider certain factors that may be relevant to their decision including but not limited to:-

- The age of the child – the closer the age of the child to 18 years the more weight should be placed on their opinion of the release of their information
- The nature of the incapacity, i.e. is it short-term or enduring
- The capacity of the client to give consent, i.e. will the child understand the implications of release of the records? If so, you should consult the child as appropriate
- The nature of the records, i.e. are they routine records? Do they contain very sensitive, personal information of the child/incapacitated adult? Can the records be part-released?
- The nature of the relationship between the requester and the client, i.e. is the child living at home with the parent? Is the requester the primary carer for the incapacitated person?
- Any other relevant information.

In cases such as this, each decision must be considered on its own merits and the decision to release or not to release must be made in the best interests of the client. If it is your decision that the records should be released in full to the requester then please proceed to do so.

If in any doubt or you have concerns about any parts of the records being released, treat such a request as a request under the FOI Act and forward it immediately to the Research Officer for processing, see contact details on page 6.

#### **Step 8: Prepare a decision letter and schedule of records**

The requester should be offered an opportunity to collect the records. If this is not possible or practical then the records should be put in a sealed envelope, clearly addressed with "return to sender" information on the outside of the envelope and a cover note confirming full release.

## **Section 7**

## **ACCESS REQUESTS UNDER THE DATA PROTECTION ACTS 1988 & 2003**

The Data Protection Acts (DP Acts) 1988 & 2003 provide for a right of access to personal data relating to living individuals. In general, the DP Acts confer a right on each individual to access their own records subject to certain limitations.

The DP Acts should be used when Administrative Access is not appropriate thereby giving LOETB the legal mechanisms to withhold information in certain circumstances whilst at the same time providing appeal rights to the requester.

When this mechanism is being considered it will mean there is concern about the release of the full record to the requester. The Data Protection Acts allow for the withholding of certain data in certain circumstances as follows:-

<b>Section of DP Acts</b>	<b>Provision</b>
4(4)	Exemption of personal data relating to other individuals
(4A)(b)(ii)	Exemption of information given in confidence
5(1)	DP Acts do not apply to personal data (a) kept for the purposes of preventing, detecting or investigating offences, etc. (b) discharging a function conferred by or under any enactment (c) prejudice the security or maintenance of good order in a prison, place of detention or barrack (d) kept for the purposes of protecting members of the public from dishonesty, incompetence or malpractice (e) contrary to the interests of protecting the international relations of the State (f) consists of an estimate of liability or damages or compensation (g) legal professional privilege (gg) kept by the Commissioner or the Information Commissioner (h) kept for statistical purposes only (i) back-up data.

Where a request for access to personal data is either being partially granted or refused, the decision letter must include the following details (Section 4(7)):-

- Statement of reasons for the refusal
- Relevant section of the Acts
- Date of decision
- Appeal rights
- Full schedule of records

### **Section 8**

## **ACCESS REQUESTS UNDER THE FREEDOM OF INFORMATION ACT 2014**

From 14<sup>th</sup> April 2015, LOETB is an “FOI body” in accordance with the definition of a “public body” in Section 6 of the FOI Act 2014 and therefore covered by its provisions. This Act brings significant legal obligations and LOETB undertakes to comply fully with both the spirit and specific provisions of the Act.

### **Records covered by the FOI Act:-**

All records “in the possession of” LOETB are covered by the FOI Act. This means all electronic and paper records are covered including but not limited to:-

- Student files
- Personnel files
- Minutes of meetings
- Staff expense claims
- Emails
- Any other record in “the possession of” LOETB.

### **What to do if you receive an FOI request:-**

All FOI requests received in any department or service of LOETB should, in the first instances, be copied immediately to:-

Following discussion with the relevant Decision Maker, it will be agreed as per the terms of this policy which Access regime is most appropriate for the specific request. If it is agreed that FOI is the most appropriate regime, the original copy of the files falling under the scope of the request should be forwarded immediately to the Research Officer.

### **Protocol for handling FOI request:-**

In order to ensure that LOETB meets its legal obligations, specific arrangements have been put in place and all LOETB staff are expected to comply with these arrangements; please refer to “Protocol for handling FOI requests” in Section 9 below.

### **TIMEFRAMES**

The FOI Act 2014 details the specific obligations on FOI bodies in handling an FOI request including the timeframes for acknowledging receipt, responding and allowing an appeal; all timeframes are detailed below.

In order to ensure that LOETB complies with these obligations, any staff member who receives an FOI request is expected to respond in a timely manner and in accordance with the “Protocol for handling FOI Requests”.

<b>STAGE OF PROCESS</b>	<b>TIMEFRAME</b>	<b>SECTION OF FOI ACT</b>
Acknowledge request	2 weeks from date of receipt of request	12(2)
Transfer request	2 weeks of date of receipt of request	12(3)
Advise of Search & Retrieval fees, seek deposit	2 weeks from date of receipt of request	27(4)
Issue decision letter	4 weeks from date of receipt of request	13(1)
Extension provision	Up to a maximum of 4 weeks additional	14(1)
Internal Review	Apply within 4 weeks of date of original decision	21(7)
Make internal review decision	3 weeks from date of receipt of internal review request	21(4)
Appeal to OIC	6 months from date of internal review decision	22(4)(b)
Appeal to OIC re S38	2 weeks from date of notification of decision	22(4)(a)
OIC issue decision	Within 4 months	22(3)

## **STEPS IN PROCESSING FOI REQUEST**

### **1. Receiving an FOI Request**

All FOI requests must be received in writing. If a requester contacts LOETB and requires assistance to make their request, appropriate assistance will be provided to enable them exercise their rights under the FOI Act 2014.

### **2. Requests that must be processed under FOI Act**

- Requests for access to a deceased person's records
- Requests that are not appropriately dealt with under Administrative Access policy (See Policy for list)
- Requests for access to non-personal records that are not routinely published or available on request

**3. On receipt of FOI Request**

When an FOI request is received in LOETB, in any office or location, it should be date stamped and copied immediately to the Research Officer (contact details on page 6 and page 14).

**4. Deciding the most appropriate route for the request**

The Decision Maker will review the request and ensure it is valid. Validity is checked according to the list below:-

- Sufficient information about the identity of the requester
- Sufficient information to identify the records sought

In relation to both points above, it is up to the Decision Maker to satisfy him/herself as to the identity of the requester (Section 37(2)) and to also ensure that the request is clear enough to identify the records that fall within the scope of the request. The Decision Maker should work with the requester to assist them if sufficient information is not provided (Section 11(2) & 12(2)).

**5. Consider best route for request**

It will be the responsibility of the Decision Maker to advise the requester on the best access route for their request. Consideration will be given to release of records under the Administrative Access Policy, Data Protection Policy for personal records and this policy. The access route that will provide the requester with the greatest access to the requested records and, in cases where records are being withheld, the most appropriate appeal rights, should be recommended.

If it is decided that the request can be processed under Administrative Access, the Decision Maker should contact the requester to advise them of the reasons for this decision and the timeframes involved. The request should then be processed in accordance with the Administrative Access policy as set out above.

If the requester wishes to pursue their request under the FOI Act please notify the Research Officer immediately.

**ROLES AND RESPONSIBILITIES**

The following personnel have been delegated the function of processing all FOI requests received by LOETB:-

<b>Title</b>	<b>Name &amp; Contact Details</b>
Research Officer	Kathleen Donnellan 057 9349414
Decision Maker	Appropriate Senior Manager/Principal/Director/Co-ordinator
Internal Reviewer	Joe Cunningham, Chief Executive 057 8621352

**Research Officer**

All FOI requests received by LOETB will be forwarded to the Research Officer immediately on receipt. Once it has been agreed that the request is to be process under the FOI Act, the Research Officer will then process the request in accordance with this policy and the Act.

The duties of the Research Officer include the following:-

- Acknowledging receipt of the request
- Gathering the files that fall within the scope of the request
- Copying and Scheduling the records
- Consulting with relevant parties
- Preparing a decision letter for the FOI Decision Maker
- Collating Statistics on Access Requests
- Liaising with Access Officers in the various locations

### **Decision Maker**

The Decision Maker will make a final decision on the records to be released and sign each decision letter. Their role will include:-

- Consulting with relevant parties prior to and following release as appropriate
- Make a final decision on what records are to be released
- Ensuring the broader implications of the release of records is considered and escalated as appropriate
- Signing all decision letters
- Be the nominated Liaison Officer with the Office of the Information Commissioner (OIC) and work with OIC on any appeals
- Take a lead role on the implementation of and compliance with the FOI Act.

### **Internal Reviewer**

The Internal Reviewer will review any decision appropriately appealed by the requester; their role will include:-

- A complete review of the original decision
- Consulting with relevant parties prior to and following release as appropriate
- Make a final decision at internal review stage, i.e. affirm, vary or annul the original decision.

## **PROCESSING AN FOI REQUEST**

### **1. Acknowledgement**

Once a valid FOI request is received the Research Officer will issue a formal acknowledgement letter which should include the following information:-

- Date decision is due
- Contact details of the Research Officer
- Information on appeal rights including deemed refusal.

### **2. Gather records that fall within the scope of the request**

The records that fall within the scope of the request should be gathered, each page of the original file numbered and a schedule of records prepared. If records are being printed from computer, these should also be numbered and scheduled.

Care should be taken to ensure that all records are included, i.e. emails, incident report forms, handwritten notes, etc.

**3. Review records**

Each page of the records should be read and sections highlighted where there is a concern about the release of particular sections or records. Examples of information that should not be released include:-

- Information about other people
- Information obtained in confidence
- Commercially sensitive information
- Legal professional privilege
- Information about an ongoing investigation or audit.

Please note, requests for access to a deceased person's records or access by parent/guardian to a child's records or those of an incapacitated person should be dealt with in accordance with the Guidance Notes and the Administrative Access policy.

**4. Consultation**

Where necessary, the Research Officer and the Decision Maker will consult with parties who may be affected by the release of records. The final decision on release will be made by the Decision Maker.

**5. Making the FOI decision**

Care should be taken to ensure that information that should not be released (i.e. exempt information) is removed from the record prior to release. A full and clear copy of the records released to the requester must be retained in the case of future appeals.

**6. Preparing the Decision**

Complete the schedule of documents and prepare the decision letter based on the schedule. The decision letter must include the following:-

- Date of the decision
- Details of any exemption section being relied upon including the reasons why the exemption is being used
- Public interest factors considered (where appropriate)
- Appeal rights.

**7. Releasing the records**

The requester should be offered an opportunity to collect the response. If this is not feasible, the response should be sent to the requester by post in a properly addressed envelope with clear "return to sender" details on the front. Where a requester seeks access to an electronic copy of the record, please ask the requester to confirm they are happy to receive their records by email. Once such confirmation is received, the records may be released electronically.

**Section 9**



## PROTOCOL FOR HANDLING FOI REQUESTS

<b>Step</b>	<b>Action</b>	<b>Person responsible</b>
1	On receipt of an FOI request, date stamp or write the date received on it	Decision Maker in department, school or facility where FOI request is received
2	Scan or copy FOI request to Research Officer immediately	As above
3	Discuss content of request with Research Officer and agree how it will be handled	As above
4	If for full release, process under Administrative Access policy as per above	As above
5	If concern about release or it necessitates processing under FOI request, transfer to Research Officer	As above
6	All original files that fall within the scope of the request forwarded immediately to Research Officer	As above
7	Research Officer processes request in accordance with policy as set out above	Research Officer
8	Consultation will take place between relevant Service Manager and Research Officer/Decision Maker prior to release	Research Officer
9	Decision Maker has final decision on release of records	Decision Maker