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*Cork Education and
Training Board*

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Cork ETB 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 Cork Education & Training Board (Cork ETB) will manage requests for access to records held or created by Cork ETB in 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, Cork ETB supports a person'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).

Cork ETB will comply fully with their legal obligations under the Data Protection Acts 1988 to 2018 and also under the Freedom of Information Act 2014.

Purpose of Policy

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

- Under Cork ETB's Administrative Access Policy;
- Under the Data Protection Acts 1988 to 2018 (referred to as DP Acts);
- Under the Freedom of Information Act 2014 (referred to as FOI Act);
- Under an Order for Discovery from the Courts; and
- By Court Order.

Cork ETB 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; and
- Requests for a deceased person's records.

Section 2

Definitions

Word or Phrase	Meaning for the purpose of this policy
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 Cork ETB services
Decision Maker/ FOI Officer	Staff member(s) delegated the function of processing requests for access to Cork ETB records.
DP Act	Data Protection Acts 1988 to 2018
Employee	A person who is or was a staff member in Cork ETB, e.g. a Teacher, Special Needs Assistant, Administrative Officer. A person who is or was contracted to work for Cork ETB.
FOI Act	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 Cork ETB on the understanding that it would be treated as confidential. Examples of personal information held by Cork ETB include name, address, date of birth, educational history, etc. For staff members of Cork ETB this may include their employment history, bank account details, pay details, employee performance details, disciplinary records, etc.
Access/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.
Special Categories of 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	A request for access to personal records 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 “Data Access Request” form on our website (www.corketb.ie). Should the requester contact a staff member of Cork ETB, either in person or by telephone, every effort shall be made to assist the requester in making their request. The requester should provide sufficient information to assist in locating files, including dates of birth, current and previous addresses, details of the contacts with Cork ETB and, in the case of a student, for example, the school attended and approximate dates. It may be necessary to obtain proof of identity, from the requester.

Cork ETB provides its staff members with access to their personal records on request under this Administrative Access Policy, without the need to invoke their rights under the Data Protection or FOI Acts.

Non-Personal Information

Cork ETB 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 Cork ETB will process this request under this policy as outlined below.

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 Access Officer or Decision Maker will assist the requester to make his/her request and to ensure that it is dealt with under the most appropriate policy.

All FOI requests must, on receipt, be copied to Sarah Flynn, FOI Officer, Cork ETB, 21 Lavitt’s Quay, Cork. Tel: 021-4907159 and email: foi@corketb.ie.

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;
- 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.

Stage of Process	Action required	Time frame
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 Cork ETB office or location, email, fax or any other form. For requests received by telephone or in person, the requester should be asked to confirm his/her request in writing and to provide proof of identity, 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 office where it is received.

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

Each School/Centre/Department should have a nominated person for dealing with routine access requests

Step 4: Check validity of request

If the requester is not known to you, seek some form of identification, e.g. copy of driving license or passport. The requester should provide sufficient information to enable the Decision-Maker to identify the records sought. If the information provided is insufficient, the requester should be contacted immediately to clarify the request. The requester should be advised that the response deadline only applies once the 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 him/her of the expected response date. The letter of acknowledgement should include 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

The Decision Maker must 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's records. See also Section 5: "When Administrative Access is not Appropriate" for further details.

Step 8: If records are 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 his/her request.

The requester should be offered an opportunity to collect the records. If this is not possible or practical, 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;
- 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);
- Records which are subject to legal professional privilege;
- Records which are the subject of an ongoing Garda investigation;
- Records which 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 the decision to the requester and quote the relevant sections of this policy.

Please Note:

All Freedom of Information requests received by Cork ETB should be forwarded to the FOI Officer at foi@corketb.ie immediately on receipt of the request. The FOI Officer will then liaise with the school/centre on how to proceed with the request.

All Data Access Requests received by Cork ETB should be forwarded to the Data Protection Officer at dataprotection@corketb.ie immediately on receipt of the request. The Data Protection Officer will then liaise with the school/centre on how to proceed with the request.

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. Alternatively, the records requested could be sent directly to the client.

Steps 5 to 8 as above

Requests from An Garda Síochána

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 Síochána. 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 Síochána advise that consent is not appropriate, then their request must be made under Section 41(b) of the Data Protection Act 2018. This requires An Garda Síochána to make their request in writing and state that the records are required for the investigation, detection and prevention of offences.

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

Requests should be acknowledged within 3 working days and responses should be issued within 15 working days of receipt. 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 include 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 Síochána 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 Síochána

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 a child'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 his/her opinion of the release of the 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 the 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 there are any doubts or concerns about the release of any parts of the records, the request should be treated as a request under the FOI Act and forwarded immediately to the FOI 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 to 2018

The Data Protection Acts (DP Acts) 1988 to 2018 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 Cork ETB 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 that 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:

Section of DP Act	Provision
91(7)(a)	Exemption of personal data relating to other individuals
91(9)(a)	Exemption of information given in confidence
94(3)	<p>DP Acts do not apply to personal data:</p> <ul style="list-style-type: none"> <i>(a) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid;</i> <i>(b) the enforcement of, compliance with or administration of any enactment related to a purpose specified in Section 70 (1)(a);</i> <i>(c) ensuring the safety of the public and the safety or security of individuals and property;</i> <i>(d) ensuring the fairness of criminal proceedings in a court or other tribunal;</i> <i>(e) ensuring the security of-</i> <ul style="list-style-type: none"> <i>(i) a penal institution;</i> <i>(ii) a children detention school within the meaning of Section 3 of the Children Act 2001;</i> <i>(iii) a remand centre designated under section 88 of the Children Act 2001;</i> <i>(iv) the Central Mental Hospital, or</i> <i>(v) any system of communications, whether internal or external, of the Garda Síochána, the Defence Forces, the Revenue Commissioners or a penal institution;</i> <i>(f) protecting the life, safety or well-being of any person;</i> <i>(g) preventing the facilitation of the commission of an offence;</i> <i>(h) avoiding the prejudice or impairment of national security, defence or the international relations of the state;</i> <i>(i) avoiding the obstruction or impairment of official or legal inquiries, investigations or procedures or the operation of legal privilege;</i> <i>(j) the performance by the Commission of its functions.</i>

Where a request for access to personal data is either being partially granted or refused, the decision letter must include the following details (Section 93(6))

- Statement of reasons for the refusal;
- Relevant section of the Acts;
- Appeal rights.

Section 8

ACCESS REQUESTS UNDER THE FREEDOM OF INFORMATION ACT 2014

With effect from 14 April 2015, Cork ETB is an “FOI body” in accordance with the definition of a “public body” in Section 6 of the FOI Act 2014 and is, therefore, covered by its provisions. This Act brings with it significant legal obligations and Cork ETB 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” Cork ETB 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; and
- Any other record in “the possession of” Cork ETB.

FOI Requests:

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

Sarah Flynn, FOI Officer, 21 Lavitt’s Quay, Cork. Tel: 021-4907159 and email: foi@corketb.ie.

Following discussions with the FOI Officer, 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 FOI Officer.

Protocol for Handling FOI Requests:

In order to ensure that Cork ETB meets its legal obligations, specific arrangements have been put in place and all Cork ETB staff are expected to comply with these arrangements. For details, 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 FOI requests, including the timeframes for acknowledging receipt, responding and allowing an appeal. All timeframes are detailed below.

In order to ensure that Cork ETB 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”.

STAGE OF PROCESS	TIMEFRAME	SECTION OF FOI ACT
Acknowledge request	2 weeks from date of receipt of request (10 working days)	12(2)
Transfer request	2 weeks of date of receipt of request (10 working days)	12(3)
Advise of Search & Retrieval fees, seek deposit	2 weeks from date of receipt of request (10 working days)	27(4)
Issue decision letter	4 weeks from date of receipt of request (20 working days)	13(1)
Extension provision	Up to a maximum of 4 weeks additional (20 working days)	14(1)
Internal Review	Apply within 4 weeks of date of original decision (20 working days)	21(7)
Make internal review decision	3 weeks from date of receipt of internal review request (15 working days)	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 (10 working days)	22(4)(a)
OIC issue decision	Within 4 months	22(3)

STEPS IN PROCESSING FOI REQUESTS

1. Receiving a FOI Request

All FOI requests must be received in writing. If a requester contacts Cork ETB and requires assistance to make their request, appropriate assistance will be provided to enable them to 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); and
- 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 any Cork ETB office, it should be date-stamped and copied immediately to the FOI Officer (contact details on page 6 and page 15).

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 his/her request under the FOI Act, please notify the FOI Officer immediately.

ROLES AND RESPONSIBILITIES

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

Title	Name & Contact Details
Access/Research Officer	Each School Principal, Centre Manager, Programme Co-Ordinator and Department Head.
Decision Maker/FOI Officer	Sarah Flynn, FOI Officer, 21 Lavitt's Quay, Cork. Tel: 021-4907159 and email: foi@corketb.ie .
Internal Reviewers	John Fitzgibbons, Director of Further Education and Training, 21 Lavitt's Quay, Cork. Tel: 021 4907100. Email: john.fitzgibbons@corketb.ie . Suzanne Mullins, Director of Organisation Support and Development, 21 Lavitt's Quay, Cork. Tel: 021 4907100. Email: suzanne.mullins@corketb.ie .

Access/Research Officer

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

The duties of the Access/Research Officer include the following:

- Gathering and copying the files that fall within the scope of the request and sending them to the FOI Officer; and
- Consulting with relevant parties, as appropriate.

Decision Maker/FOI Officer

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

- Acknowledging receipt of the request;
- Copying and Scheduling the records;
- Consulting with relevant parties as appropriate;
- Consulting with relevant parties, as appropriate, prior to and following release;
- Making 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;
- Drafting, signing and issuing all decision letters;
- Collating statistics on Access Requests;
- Being the nominated Liaison Officer with the Office of the Information Commissioner (OIC) and working with OIC on any appeals;
- Taking 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; and
- Making a final decision at internal review stage, i.e. affirming, varying or annulling the original decision.

PROCESSING A FOI REQUEST

1. Acknowledgement

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

- Date decision is due;
- Contact details of the FOI Officer; and
- 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. These records should 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;
- Documents which are subject to legal professional privilege; and
- Information about an ongoing investigation or audit.

Please note that requests for access to a deceased person's records or access by a parent/guardian to a child's records or those of an incapacitated person should be dealt with in accordance with the procedures in Section 4 and the Administrative Access policy.

4. Consultation

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

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

The decision letter should be based on the schedule of documents and 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); and
- 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 records, 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

Step	Action	Person Responsible
1	On receipt of a FOI request, date stamp or write the date received on it.	Access/Research Officer in office where FOI request is received.
2	Scan or copy FOI request to FOI Officer immediately.	As above
3	Discuss content of request with FOI Officer and agree how it will be handled.	As above
4	If for full release, process under Administrative Access policy.	As above
5	If there is concern about release or it necessitates processing under FOI request, transfer to FOI Officer.	As above
6	All original files that fall within the scope of the request should be forwarded immediately to FOI Officer.	As above
7	FOI Officer processes request in consultation with Access/Research Officer and in accordance with policy as set out above.	FOI Officer
8	Consultation will take place with all relevant staff/third parties prior to release.	FOI Officer
9	Decision Maker has final decision on release of records and decision will issue from Cork ETB.	Decision Maker