



**University College Cork
– National University of Ireland, Cork**

Routine Access to Records Policy

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Approval

This document requires the following approvals:

Name	Title	Date
Michael Farrell	Corporate Secretary	29/05/2013

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1. INTRODUCTION

Under the Freedom of Information Act, 1997 (as amended by the Freedom of Information (Amendment) Act 2003), (“the Freedom of Information Acts”) all records containing personal information in the control of University College Cork (“the University”) may be accessed.

We are in an era of openness and transparency. The University supports the right of individuals to see what information is held about them by the University. As staff members we are therefore encouraged to make appropriate information readily available and provide assistance to students and staff to access their personal records.

Access to records and information held may be sought by a number of different means:

- Routine Access Policy (this policy)
- Freedom of Information Acts, 1997 and 2003
- Data Protection Acts, 1988 and 2003
- Court Orders for Discovery.

Access to the personal records of students and staff members should generally be provided routinely to the individuals themselves. Where access to a record cannot be provided, the student or staff member should be informed of this and advised of the option of making an application under the Freedom of Information Acts, or the Data Protection Acts, 1988 and 2003. Certain information may be of such a sensitive nature that requests for access will only be dealt with under the Freedom of Information or Data Protection legislation.

As a general rule, information concerning students and staff should not be released to another person without the explicit consent of the student or staff member concerned. Confidentiality of personal records is paramount and we are all responsible for safeguarding the privacy rights of students and staff.

2. DEFINITIONS:

‘Personal Information’

The term “Personal Information” used in this document means information about an identifiable individual that would ordinarily be known only to the individual or his/her family or friends and is held by the University on the understanding that it would be treated by it as confidential.

Personal information includes information relating to:

- educational, medical, psychiatric, or psychological history
- financial affairs of students and staff
- employment and employment history
- criminal history
- religion, age, sexual orientation or marital status
- social welfare entitlements
- assessment of liability to pay tax or duty to State
- property of the students and staff
- name, symbol, code or other attributes (such as student number, staff number, etc.) identifying students or staff in public records containing personal information
- views or opinions of another person about students or staff.

Personal information for staff and Governing Body members **does not** include:

- name of staff or Governing Body member
- information relating to office/position held
- terms of occupancy of position or terms of the contract
- anything written or recorded by a staff member or Governing Body member in the course of performing their functions of office or position.

This type of information may be released by the University, subject to the need to protect the public interest and confidentiality.

The classes of personal information which may be held by the University include:

Students:

- Academic records
- Administrative records
- Health records

Staff:

- Personnel and related records
- Administrative records Health records

'Health Records'

The term "health records" used in these guidelines in relation to students and staff includes the clinical or any other form of health/counselling information about students or staff held electronically or in manual form by the University.

'Records'

The term "Records" used in this document refers to records created or received by University officers or employees in the course of their duties on behalf of the University. Records can be in a variety of physical forms including: paper documents (including both written and printed matter), electronic records (i.e. word processing files, database, spreadsheet files, emails, electronic data on any media, etc.), books, drawings, photographs, or any thing on which information is recorded or stored by graphic, electronic or mechanical means, or copies thereof, received by any academic or administrative office of the University in connection with the transaction of University business and retained by such offices as evidence of the activities of the University or because of the information contained therein.

'Head of Department'

For ease of use, the term 'Head of Department' is used frequently in this policy document. This should be taken to mean Heads of all types of functional area within the University (e.g. Colleges, Schools, Faculties, Administrative Offices, Research Units, as well as Academic Departments).

Manner of Access - Different means of access to records may be sought. The most common forms of access sought are as follows:

- Obtain copy of records
- View records.

3. MAKING THE APPLICATION:

Access to personal records outside of the Freedom of Information Acts should be provided in accordance with this Policy. Requests under the Freedom of Information Acts should only be made (i) where access has been refused under this Policy or (ii) in defined circumstances referred to in the section of this Policy entitled, 'Exceptions to Routine Access'.

An application for Routine Access by a person seeking access to his/her records should be in writing and forwarded to the appropriate Head of Department.

The following information should be provided to locate the relevant documents:

- the full name of the applicant
- his/her date of birth
- his/her student or staff number if available
- his/her present address and, if different, address at the time of association with the Department/Office in question
- details of the records to which the request refers.

The Head of Department may delegate responsibility for processing Routine Access applications to another appropriate person within the area. The appropriate person should, where possible, be involved in the handling of these applications to ensure that only information relevant to the application is released. Consultation with the applicant is encouraged, particularly to assist in identification of the actual documents to which access is sought or to narrow the field of inquiry.

Where possible, applicants should be encouraged to apply personally for their records. However, the applicant may consent in writing for a third party to have access to his or her records.

4. ACKNOWLEDGEMENT AND NOTIFICATION OF DECISIONS:

An acknowledgement of the request should be issued within 5 working days of receiving the request. Access to the record should be provided within 20 working days of receipt of the application. Where a decision cannot be reached within the 20-day deadline the applicant should be informed of this, the reasons for the delay and the approximate date when a decision will be made. Applicants should always be advised of progress.

5. THIRD PARTY APPLICATIONS:

Third Party Requests: When the request is for personal information in respect of another person, the consent of that person is required in writing and should be confirmed in writing, to the person to whom the information refers, by the Head of Department with the individual concerned before the release of any records.

The Head of Department processing a third party application must have regard to the exceptions to this policy as set out in the section 'Exceptions to Routine Access' below.

Persons with an Intellectual Disability: Where a request is made on behalf of a person with an intellectual disability, the Head of Department processing the request shall take into account the relationship of the person making the request to the applicant, the reasons for the request, and in making a decision to grant/refuse, shall decide what is in the best interests of the applicant concerned.

Requests by Legal Representatives: Access to records containing personal information about students or staff should **not** be given to a solicitor without the explicit consent of the student or staff.

Records of Deceased Persons: Given the level of sensitivity of information contained in records, all applications for access to deceased person's records should normally be processed under the Freedom of Information Acts (refer to section below on: Exceptions to Routine Access). This process facilitates detailed consideration of the records and appropriate public interest arguments for and against release.

6. EXCEPTIONS TO ROUTINE ACCESS:

If a Head of Department believes that access should not be provided to certain information contained in a record, the application must be processed under the Freedom of Information Acts or the Data Protection Acts and the applicant should be notified accordingly.

The following are examples of records that should not be released routinely:

- Records containing personal information relating to deliberations of an investigation, allegations, complaints and other such information
- Records containing personal information of a deceased person
- Health records where it is considered that access could be prejudicial to the physical or mental well-being or emotional condition of the person
- Where the records involved contain information about a third party
- In circumstances where it is considered that access could be prejudicial to the physical or mental well-being or emotional condition of the person
- In circumstances where it is considered that the record contains matter about a third party received in confidence
- Any other sensitive matter such as documents revealing confidential sources of information.

If a decision is taken that an application is to be processed under the Freedom of Information Acts or the Data Protection Acts rather than via the Routine Access Policy, it must be forwarded by the Head of Department to the Information Compliance Officer (Office of Corporate & Legal Affairs) within five working days of receipt of the application.

7. PROVIDING ACCESS TO RECORDS:

In providing access to records, proof of identity will be required in all circumstances involving access to applicants' records unless the applicant is personally known to the Head of Department. It is the responsibility of the Head of Department to obtain the proof of identity **before** access is provided. The requester must present **proof of their identity** in person (any two of the following should be required as proof of identity: passport, driving licence, utility bill, student ID, staff ID). Where it is not possible to present proof of ID in person, the Head of Department must ensure that s/he is satisfied as to the identity of the requester.

As a general rule, such matters as political and religious affiliations, criminal record, medical history, racial origin and financial details are considered to be the most sensitive of data. In such matters, greater care should be taken with identification procedures.

Where access is provided to an individual's own records under the Routine Access Policy, the individual is to be provided with full access to the records. If any doubt exists regarding the release of the documents, or the records contain information provided by a third party in confidence, the Head of Department responsible for processing the application should consult with the Information Compliance Officer (Office of Corporate & Legal Affairs) as early as possible, but in any event no later than five working days after receipt of the application.

In relation to Routine Access, an applicant should be offered copies of the record to be forwarded to them in most cases. Where it is prudent to offer physical access to a record this should occur, where possible, within the premises of the department. The Head of Department should arrange an appointment time that is convenient for the applicant, taking into account the circumstances of the applicant. The applicant should be supervised while viewing the records.

Except on the instruction of a Court, the Information Commissioner, or in exceptional circumstances, at the discretion of the Head of Department, original records should not be released from the possession of the University. Where release of original records is required a copy should always be retained and the records should be signed for.

Copies of records are usually to be provided free of charge to the applicant/authorised third party unless a large number of records are involved. Requests for copies of videos and photographs will be provided at an appropriate copying charge.

Where records cannot be collected by the applicant in person, RECORDS MUST BE SENT TO APPLICANTS OR AN AUTHORISED THIRD PARTY BY REGISTERED POST.

8. AMENDMENT OF RECORDS:

The Freedom of Information Acts give applicants a legal right to apply for amendment of their records if they believe the records to be inaccurate, incomplete or misleading. The right provided under the FOI Acts does not restrict the ability of the Head of Department to amend records administratively. Incorrect personal data may simply be replaced with the correct data upon verification with the client. Destruction or disposal of records should only occur in accordance with Records Management Policy of the University.

9. REQUESTS FROM THE MEDIA:

All queries from the Media should be referred to the Office of Media and Public Relations in the first instance. If a query cannot be dealt with routinely (i.e. if it involves a request for records containing personal or other sensitive information (as outlined in section 6 above), it should be forwarded to the Information Compliance Officer.

10. FAXING/EMAILING OF CLIENTS' INFORMATION:

As a general rule, for security reasons, records containing personal information should not be faxed or emailed.

11. OTHER MECHANISMS FOR ACCESS TO RECORDS:

Court Order

A Court Order for discovery is made where a party to proceedings seeks copies of documents, notes and memoranda, which will either strengthen his/her case or weaken the case of his/her opponent.

A party in litigation can seek discovery where the University is also a party. It can also be sought in litigation where the University is not a party and has no involvement (this is known as 'third party discovery' and is also known as 'non-party discovery').

In litigation involving the University, where an Order for discovery is sought the University's Solicitors will ordinarily deal with the matter. In a normal case, proceedings would already have issued involving the University. A request is then made through the University's Solicitors requiring the University to discover, on oath, the documents in its possession, power or procurement. The University's Solicitors prepare an Affidavit (a sworn statement) on behalf of the person required to seek the Affidavit setting out full details of all documents and other records held by the University which are relevant to the proceedings or in respect of which an order has been made. It is generally the case that all documents and records have to be discovered but the Courts do recognise that there are exceptional circumstances where discovery may not be warranted or justified because of over-riding policy considerations or more important interests. One such exception arises in the case of what is called 'legal privilege'. Where there exists a relationship between a solicitor and a client, the Courts generally believe that no discovery should be made of documents, notes or memoranda that pass between the solicitor and the client if the papers were created for the purpose of rendering or obtaining legal advice.

The release of document/files under court orders must be through our solicitors in conjunction with the Office of Corporate & Legal Affairs.

Subpoena

A subpoena is a document issued by the Court directing the attendance of a person before the Court. A subpoena duces tecum is a High Court document directing someone to attend before the Court with certain documents. It can arise that a subpoena duces tecum would be issued by the High Court (on the application of one of the parties to litigation) directing the attendance of some Officer of the University with documents relating to a certain person or matter. The Officer must attend before the Court as directed with the documentation. However, this documentation should not be disclosed to anyone without the permission of the person whose records are involved. In general, if the Court directs that information be given to the Court that information must be given. In all cases the matter should be dealt with through the University solicitors. In Circuit Court cases a subpoena type document is called a Witness Summons.

Before records leave the University, authorisation should be obtained from the Office of Corporate & Legal Affairs.

Search Warrants

Compliance with a search warrant is required by law and staff should be advised that they should inform their immediate superior of any official demand for access to records. The warrant must be specific regarding the records required. If in doubt, contact the Office of Corporate & Legal Affairs for advice.

12. SUPPLY OF INFORMATION TO INFORMATION COMMISSIONER IN ACCORDANCE WITH FREEDOM OF INFORMATION ACTS 1997 AND 2003:

The Office of the Information Commissioner was established under Section 33 of the Freedom of Information Acts and as such has a statutory Right of Access to records held by public bodies covered by the Acts, including Universities. The Commissioner may in the course of his/her deliberations, seek further information, require any person to hand over relevant documents in their

possession and, if necessary, enter any premises occupied by a public body to obtain the necessary access to the records concerned (Section 37 of Freedom of Information Acts).

The Information Commissioner also has a statutory appeals function in relation to requests for access to records/information etc. under Section 34 of the Freedom of Information Acts.

13. ACCESS AUTHORISED OR PERMITTED BY STATUTE (OTHER THAN FOI):

Some individuals or bodies have statutory rights of access to certain types of information. An example of this would be a request by the Central Statistics Office. Before records are released in response to a statutory demand, the authority of the person requesting access and the nature of the access requested should be checked to ensure that only material relevant to the statutory demand is released. If in doubt, contact the Office of Corporate & Legal Affairs for advice.

14. ACCESS PROHIBITED BY STATUTE OR REGULATIONS:

Current statutory secrecy provisions in legislation may apply to the disclosure of information. Wherever non-disclosure of information is authorised by any legislation or regulation such provision shall be relied upon e.g., environmental health legislation.

15. REQUESTS FOR INFORMATION BY AN GARDA SIOCHÁNA:

Where an applicant has authorised Gardaí to have access to information from his or her records, this may be supplied.

Requests for information by the Gardaí, where the client has not authorised access to information from his or her records should be dealt with in accordance with Section 8 of the Data Protection Acts and in consultation with the Office of Corporate & Legal Affairs. A request under Section 8 of the Data Protection Act should be made in writing by the Gardaí. Verbal requests for information should not be actioned.

16. INFORMATION REQUESTED FOR RESEARCH PURPOSES:

Research proposals should be accompanied by a comprehensive protocol detailing the aims, methods and reasons for the study. Where access to records is requested, the nature of the access requested should be clearly specified and the safeguards for privacy outlined.

Where clients are to be contacted directly by the researcher, or potentially identifying information is requested, the written consent of the client must be obtained by the relevant Head of Department, prior to access being allowed.

Non-identifying client information should be available to be accessed by staff, quality assurance staff and other appropriate members of staff. Non-identifying client information may also be made available for research purposes following the obtaining of the institution's authorisation for same. All queries on Data Protection should be referred to the Information Compliance Officer.

Where access to information is to be allowed under these provisions, the records are not to be removed from the University.

17. CONFIDENTIALITY:

An officer or employee or agent of the University must not give to any other person, whether directly or indirectly, any information acquired by reason of being such an officer, employee or agent, if a person who is, or has been a client in, or has received services from, the University could be identified from that information.

The previous paragraph does not apply:

- To the giving of any information that an officer, employee or agent is expressly authorised or permitted to give under the Freedom of Information Acts or any other Act or that is required by operation of law;
- To the giving of information with the prior consent of the person to whom it relates or, if that person has died, with the consent of the most senior available next of kin of that person.

A person who has been an officer, employee or agent of the University, must not give to any other person, directly or indirectly, any information acquired by reason of being such an officer, employee or agent which, at the time when that person ceased to be such an officer, employee or agent, it was his or her duty not to disclose.

REVIEW

This policy has been approved by the Corporate Secretary. Any additions or amendments to this or related policies will be submitted by the Corporate Secretary for approval.

The policy will be reviewed every two years by the Information Compliance Officer in light of any legislative or other relevant developments who will consult as necessary before submitting any amendments for approval.

FURTHER INFORMATION

If you have any queries in relation to this policy, please contact:

Catriona O'Sullivan
Information Compliance Officer
Office of Corporate & Legal Affairs
University College Cork
4 Carrigside. College Road
Cork
Tel: 021 4903949
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DISCLAIMER

The University reserves the right to amend or revoke this policy at any time without notice and in any manner in which the University sees fit at the absolute discretion of the University or the President of the University.