



FREEDOM OF INFORMATION POLICY

Policy Type	Information Governance
Directorate	Corporate
Policy Owner	Director of Finance, Estates and IM&T
Policy Author	IG Lead Officer
Next Author Review Date	01 February 2024
Approving Body	Corporate Governance & Risk Sub-Committee
Version No.	1.0
Policy Valid from date	01 July 2020
Policy Valid to date:	31 July 2024

'During the COVID19 crisis, please read the policies in conjunction with any updates provided by National Guidance, which we are actively seeking to incorporate into policies through the Clinical Ethics Advisory Group and where necessary other relevant Oversight Groups'

DOCUMENT HISTORY

(Procedural document version numbering convention will follow the following format. Whole numbers for approved versions, e.g. 1.0, 2.0, 3.0 etc. With decimals being used to represent the current working draft version, e.g. 1.1, 1.2, 1.3, 1.4 etc. For example, when writing a procedural document for the first time – the initial draft will be version 0.1)

Date of Issue	Version No.	Date Approved	Director Responsible for Change	Nature of Change	Ratification / Approval
July 2020	V0.1		Director of Finance, Estates and IM&T	New policy	
22 July 2020			Director of Finance, Estates and IM&T	Contents agreed via voting buttons and Chairs approval at	Information Governance Sub-Committee
31 July 2020	1.0	31 July 2020	Director of Finance, Estates and IM&T	Policy approved at	Policy Management Sub-Committee
29 January 21	1.0		Quality & Performance committee	12 month blanket policy extension due to covid 19 applied with author review date set 180 days prior to Valid to Date.	Quality & Performance committee
21 April 2021	1.0	31 July 2020	Director of Finance, Estates and IM&T	Extended policy uploaded and linked back	Corporate Governance

NB This policy relates to the Isle of Wight NHS Trust hereafter referred to as the Trust

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1 Executive Summary

This policy details the expectation and legal requirements for the Trust to ensure compliance with the Freedom of Information Act 2000, and the Environmental Information Regulations 2004. This policy is applicable to all staff to include permanent and temporary staff, volunteers, and Non-Executive Directors within the Trust, who in the course of their duties may receive a request for information under this legislation and be required to assist accordingly.

2 Introduction

The Freedom of Information Act (FOIA) 2000 is part of the Government's commitment to greater openness and transparency in the public sector, a commitment supported by Isle of Wight NHS Trust. The Freedom of Information Act 2000 furthers this aim by helping to transform the culture of the public sector. It enables members of the public to question the decisions of public authorities more closely and ensure that the services provided are efficiently and properly delivered.

The main features of the FOIA:

- A general right of access to recorded information held by public authorities, subject to certain conditions and exemptions. Recorded information can take many forms including agendas, minutes of meetings, personal notebooks, e-mails, registers, lists and CCTV footage. This list is not exhaustive.
- Members of the public can request current information as well as information produced many years ago as the Act is fully retrospective;
- The Trust has a duty under the Act (unless an absolute exemption applies) to inform the applicant whether they hold the information requested and communicate the information to the applicant within 20 working days
- Some exemptions require a 'public interest test' to evaluate whether the public interest in maintaining the exemption in question outweighs the public interest in disclosure
- A duty on every public authority to adopt and maintain a Publication Scheme;
- The oversight of the Information Commissioner's Office which has wide powers to enforce the rights created by the Act and to promote good practice.
- A duty on the Lord Chancellor to develop Codes of Practice for guidance on specific issues

3 Definitions

Absolute Exemption

Applied to information that does not have to be released to the requestor either through a Publication Scheme or through the general right of access under the Act. Information to which the balance of public interest to be in favour of non-disclosure.

Duty to confirm or deny

The Trust will consider whether information should be provided under section 1(1) (b), or whether it is subject to an exemption. In some instances when complying with the duty to confirm or deny under section 1(1) (a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the Act allows the Trust to respond by refusing to confirm or deny whether we hold the requested information.

Environmental Information Regulations

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The regulations do this in two ways:

- The Trust must make environmental information available proactively
- Members of the public are entitled to request environmental information from the Trust.

The regulations cover any recorded information held by public authorities in England, Wales and Northern Ireland.

Public authorities include government departments, local authorities, the NHS, police forces and universities. The Regulations also cover some other bodies that do public work that affects the environment.

The Regulations apply only to the environmental information held by public authorities. The Freedom of Information Act gives people access to most other types of information held by public authorities.

Fees Notice

Based on FOIA and Data Protection Act 2018 we will provide information free of charge, wherever possible, when it is requested.

Under the FOIA the Trust is entitled either to charge for or decline requests for information that would cost the Trust more than a set amount, referred to as the "appropriate limit", to deal with the request.

Fees Regulations

Whilst this policy will apply to all requestors, the Trust will not charge individuals either a fee for dealing with requests or for our costs of preparing a response to other information requests, nor will the Trust charge individuals for disbursement costs which are incurred in handling other information requests, provided these costs are reasonable and not excessive.

National regulations that prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations do not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

General Right of Access

This refers to information held by public authorities. A requestor has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. The grounds relate to the request itself and the circumstances in which an authority is / is not obliged to comply with it.

The Trust is required to inform a requestor whether it holds the information specified in the request. This is known as “the duty to confirm or deny”. The Trust will be able to comply with its duty to confirm or deny under section 1(1) (a) to respond to a request by at least informing the requestor whether or not it holds the information.

Information Commissioner

The Information Commissioner enforces and oversees the Data Protection Act 2018 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament. The Information Commissioner’s Office (ICO) is responsible for providing information and guidance, investigating complaints and issuing sanctions including a range of enforcement actions to public authorities who fail to follow the Act.

Publication Scheme

A scheme which specifies the classes of information that the Trust publishes, or intends to publish; the manner of the publication and whether the information is available to the public, free of charge or not.

Public Authority

The Act is intended to have wide application across the public sector at national, regional, and local level. The NHS is designated by the Act as a public authority.

Public interest test

The public interest test can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. There is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision making by public authorities, in upholding standards of integrity, in ensuring justice and fair treatment for all, in securing the best use of public resources and in ensuring fair commercial competition in a mixed economy.

The public interest is not necessarily the same as what interests the public. The fact that a topic is discussed in the media does not automatically mean that there is a public interest in disclosing the information that has been requested.

FOIA section 2(2) refers to the public interest; furthermore, disclosures of information under FOIA are in effect to the world at large and not merely to the individual requestor. The requestors private interest are not in themselves the same as the public interest and what may serve those private interests does not necessarily serve a wider public interest.

When carrying out the public interest test the Trust should consider the circumstance at the time at which it deals with the request. If the Trust is carrying out an internal review then it may consider the circumstances up to the time the review is completed.

The Trust should consider the argument in favour of disclosing the information and those in favour of maintaining the exemption. The Trust should try to do this objectively, recognising that there are always arguments to be made on both sides.

Qualified Exemption

Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure.

Repeat Requests

Under Section 13(2) of the Act, the Trust does not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period of time has elapsed between those requests. A repeat request will be identical if both its scope and its wording precisely match that of a previous request.

The Trust may only apply Section 13(2) where it has either:

- Previously provided the same requestor with the information in response to an earlier FOIA request; or
- Previously confirmed the information is not held in response to an earlier FOIA request from the same requestor.

If neither of these conditions applies then the Trust must deal with the request in the normal manner.

Requestor

The individual(s), group or organisations, who are requesting access to information under the Act.

Vexatious Requests

Under section 14(1) of the Act, the Trust does not have to comply with vexatious requests, and there is no Public Interest Test required. This section may be used in a variety of circumstances where a request or its impact on the Trust may have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. Under this section the Trust will carefully consider any request before considering it as *vexatious*, and is mindful that a vexatious request is applied to the request itself and not the individual who submitted it.

If the Trust is concerned about any possible prejudice which might arise from disclosure, then the potential for use of an appropriate exemption will be considered.

Working Days

Working days are defined for the purpose of this policy as any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday under the Banking and Financial Dealings Act 1971 (This includes England, Wales, Scotland and Northern Ireland bank holidays).

4 Scope

This policy provides a framework within which the Trust ensures compliance with the requirements of the FOIA and underpins any operational procedures and activities connected with the implementation of the FOIA.

This policy is intended to cover all records created in the course of the business of the Trust, i.e. corporate records which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes e-mails and other electronic records.

This policy should be read in conjunction with the Trust's Records Management Policy, and the Records Management Code of Practice for Health and Social Care 2016

'In the event of an infection outbreak, flu pandemic or major incident, the Trust recognises that it may not be possible to adhere to all aspects of this document. In such circumstances, staff should take advice from their manager and all possible action must be taken to maintain ongoing patient and staff safety'

5 Purpose

This Policy is a statement of what the Trust intends to do to ensure compliance with the FOIA. It is not a statement of how compliance will be achieved; this will be detailed within Standard Operating Procedures (SOPs).

6 Roles and Responsibilities

All members of staff are obliged to adhere to this policy. A failure to adhere to this policy and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. They are also responsible for ensuring that members of staff are updated with regard to any changes in this policy.

Chief Executive (Accountable Officer) is ultimately responsible for the Trust's compliance with Freedom of Information Act and associated legislation regarding the disclosure of information about the Trust.

Director of Governance and Risk / Senior Information Risk Officer (SIRO) acts as an advocate for information risk on the Board and in internal discussions and provides written advice to the Accountable Officer regarding the "information risk" elements of their annual Statement of Internal Control (SIC).

Information Governance Lead and Data Protection Officer with the support of the SIRO and local IG Leads, where appropriate, are responsible for:

- Ensuring organisational compliance with the FOI Act
- Maintaining the currency of this policy
- Promoting FOI training and awareness throughout the organisation

- Ensuring the general public has access to information about their rights under the FOI Act
- Assisting with investigations into complaints and appeals

Senior Managers

Senior Managers are required to approve the requests, following collation of responses and required information; supplied by the FOI Leads within their specialties.

Information Asset Owners (IAOs)

IAOs are senior members of staff who are owners of any information which falls under the remit of this policy, in addition to any other information assets of the organisation. IAOs work in a variety of senior roles to support the SIRO by providing the relevant information in their respective areas to the Information Governance department, who manage the Freedom of Information requests centrally for the Trust:

FOI Leads (FOILs)

The FOIL is the delegated member of staff within each specialty who is responsible for coordinating the data / information from their specific area. Where a request covers multiple areas they will liaise with other FOI Leads to ensure a complete and coordinated response within the required format and is provided within the appropriate timescales to the Information Governance department. Where further clarification is required from the requestor in order to respond to the questions, the FOIL will liaise with the Information Governance department.

Information Governance Department

Is responsible for

- logging the initial request and sending an acknowledgement to the requestor;
- sending initial request to the appropriate FOIL;
- and providing assistance to the FOIL including responses to the requestor when clarification is sought.

Once approvals are received, sending completed requests to the requestors.

Taking decisions on contentious FOI matters e.g. considering the Public Interest test where appropriate

Information Governance Sub Committee is responsible for:

- Reviewing progress on the Trust's compliance with the Act and with relevant regulatory requirements (e.g. Data Security and Protection Toolkit Reporting FOI issues to the Performance Committee

Directors and Associate Directors, Divisional Managers and Department Heads are responsible for:

Ensuring that all corporate information, for example contracts and commercially sensitive information, is created with the awareness that a request for this information may be received and information which is not exempt must be disclosed to comply with the Act. Senior members of staff should therefore ensure that they

(and their staff) receive adequate training to ensure they are able to adhere to policies, procedures and guidance.

All Staff Members are responsible for:

- The creation of their own records, including emails, which may be subject to and disclosed in response to an FOI request, and for adhering to the Trust's Information Governance policies including Records Management policies
- Ensuring that any received requests for information are forwarded to the FOI Team within one working day.

7 Policy detail/Course of Action

7.1 Legislation

The Policy supports the principle that openness and transparency should be the norm in public life. The Trust wants to create a climate of openness and dialogue with all stakeholders and improve access to information about the Trust and will facilitate, encourage and promote the development of such an environment.

Requests for information relating to the environment fall under the Environmental Information Regulations (EIR) 2004. Such requests include information relating to air, water, land, energy, noise, flora and fauna, soil, waste and omissions. The main differences with accessing information under EIR are that the request can be made in any format, written or verbal and all exemptions are subject to the public interest test.

All information requests under FOIA and EIR will be processed in accordance with this policy.

The Re-use of Public Sector Information (PSI) Regulations 2005 recognises that public sector information is a valuable information resource that could be utilised by the private sector to develop added products and services. A request for access to information held by the Trust may be accompanied by a request to re-use the information for commercial purposes (this does not include the sharing of documents between public service bodies in the normal course of their business).

If an application for re-use of information provided under FOI is made to the Trust, under Regulation 16 of the PSI Regulations, the Trust has a responsibility to specify any:

- Applicable conditions for re-use, and
- Standard charges for re-use

The Trust governs commercial re-use of information disclosed under FOI by using the Open Government Licence, outlined in FOI response letters:

The Trust provides information under the Freedom of Information Act in the spirit of the template Open Government Licence for public sector information. Should a requestor wish to re-use any information in line with this Licence then they are not required to take any further action.

The Open Government Licence allows re-use of information freely and flexibly, with only a few conditions. If re-use information is outside of the Licence terms then the Trust will need to be informed for permission if appropriate in accordance of copyright law.

The Trust supports the belief that:

- Individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 2018 and is dealt with in other Trust policies
- Public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.
- Staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. The policy sets out a framework to provide this knowledge.
- Common standards are required to ensure that the organisation is compliant with the Act. The policy outlines the areas in which common standards will be established through other Trust policies and procedures.

The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department.

7.2 Publication Scheme

The Trust has adopted the latest model Publication Scheme approved by the Information Commissioner.

The Publication Scheme details the information and the format which the information is available. The Publication Scheme is available through our website. It is subject to regular review, and will be formally reviewed at least annually.

Enquires relating to requests for information listed in the Publication Scheme may be received verbally or in writing. The Trust has established systems and procedures to process such requests arising from the Publication Scheme.

In the spirit of transparency and openness, the Trust will endeavour to publish FOI responses on our Trust website; <https://www.iow.nhs.uk>

It is a live document and is updated quarterly.

7.3 General Rights of Access

The Freedom of Information Act gives a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request to the Trust for information is entitled:

- To be informed in writing whether the Trust holds the information of the description specified in the request, and

- If the Trust holds the information to have that information communicated to them

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective, in that if the Trust holds the information it must provide it, subject to the certain conditions and exemptions. The Trust has procedures and systems in place to facilitate access by the public to recorded information.

A request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describe the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference (e.g. e-mail).

7.4 Conditions and Exemptions

The duty to confirm or deny is subject to certain conditions and exemptions. The duty to confirm or deny does not arise where the Trust:

- Reasonably requires further information in order to identify and locate the information requested, and
- Has informed the requestor of that requirement

The Trust will make reasonable efforts to contact the requestor for additional information pursuant to their request should further information be required.

The Trust does not have to comply with this duty if the information is exempt. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with the Act justify the use of such exemptions.

The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit that has been established in national Fees Regulations (£450) (Section 12). In terms of time, this is based on an average cost to the Trust of £25 per hour, which relates to a maximum of 18 hours. The Trust will work with requestors to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication of information that exceeds this limit.

The Trust is not obliged to comply with a request for information if the request is vexatious (Section 14). Where the Trust has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

Other exemptions may apply to Trust information such as:

Section 21 – Information already reasonably accessible
Section 22 – Information intended for future publication
Section 22A – Research information
Section 31 – Prejudice to law enforcement
Section 38 – Endangering Health and Safety
Section 39 – Environmental information
Section 40(1) & 40(2) – Personal information of the requestor or third parties
Section 41 – Confidentiality
Section 42 – Legal professional privilege
Section 43 – Trade secrets and prejudice to commercial interests
Section 44 – Prohibitions on disclosure

7.5 Charges and Fees

The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying on to other media. The Publication Scheme and the procedures that support this policy will provide further guidance on charging.

Any charges made by the Trust will be in accordance with the Fees Regulations published by the Department of Constitutional Affairs.

In all cases where the Trust chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the requestor as required. Requestors will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

7.6 Time Limits for Compliance with Requests

The Trust has established systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request. All staff including Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

If a request is not sufficiently clear to enable the Trust to locate or identify the requested information, then it is the Trust's duty to go back to the requestor to ask for further clarification.

The 20 working days timeframe is the normal timescales for compliance; however, there is provision within section 10 for an authority to extend or vary this time limit under certain circumstances.

If the information requested by the requestor incurs a charge or a fee and the requestor has paid, the working days in the period from when the requestor received the fees notice to when they paid will be disregarded for the purpose of calculating the twentieth working day following receipt.

If the Trust chooses to apply an exemption to any information, or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs

of compliance, a notice shall be issued within twenty working days informing the requestor of this decision.

7.7 Internal Timescales and Validation

The expected process for internal management of the request is outlined below. The nature of requests often means it will not be possible to follow this explicitly (e.g. in the event of information being required for more staff than initially anticipated). Timescales are set out such that minor delays should still enable the Trust to respond within the statutory timeframe. In the event of any moderate delays being expected, staff should contact the Information Governance department who will escalate to the IG Lead and Data Protection Officer immediately.

Initial administration of the request should be completed within two working days of receipt. The request will be communicated to appropriate FOILs within this time period, the relevant department will then have five working days in order to initially confirm or deny and identify and retrieve the requested information. If the request is not relevant or cannot be answered, FOILs must respond to the FOI team within five working days of receipt of the request to avoid unnecessary delays to the request.

All requests are approved by the FOILs designated approving senior manager prior to returning to the IG department for quality review before formal disclosure and completion of the request. Executive Directors may also be involved where relevant and the Associate Director for Communications also validates all media and parliamentary requests.

7.8 Creating 'New Information'

The Trust does not have to create 'new information' to respond to requests. New information is not created where the Trust:

- presents information it holds in the form of a list or schedule
- compiles an answer to a request that involves simple manual manipulation of information held in files, or
- extracts information from an electronic database by searching it in the form of a query

7.9 Disclosure of Information about Staff

Whilst the Data Protection Act applies to personal information that the Trust holds about its staff, both in a professional and personal capacity, the practical application of the Freedom of Information Act suggests that there are instances where disclosure of information about staff would not breach the principle of 'fairness' and the conditions necessary for processing personal data under the Data Protection Act.

Factors for public authorities to consider when deciding whether to release information identifying an employee:

- Is the information requested about an employee's professional or personal life? The threshold for releasing professional information will generally be lower than that for releasing truly personal sensitive information e.g. that found in an employee's occupational health record.
- Can the information requested be edited to remove personally identifiable information? In some cases it may be possible to redact information identifying a specific employee without reducing the value of the information

released. In other cases this approach will not be feasible, for example where the information requested is specifically about the activities of a named employee.

- The Trust will only release information regarding employees who are Director Level or above. Have employees been informed that information about them will be disclosed? What information, if any, will they expect to be disclosed? This will depend on the nature of the request and the seniority and role of the employees who are the subject of the information. In general, more senior staff and those carrying out public functions should expect more information about them to be disclosed.
- The Trust will ensure that any third party information will be redacted. Is the requested information about disciplinary action involving a particular employee? Arguments in favour of disclosure are stronger where a disciplinary measure is being taken against a senior member of staff over a serious allegation of impropriety or criminality. This is particularly the case where an external agency is involved in an investigation. Arguments in favour of disclosure are weaker where the information is about an internal disciplinary procedure concerning a relatively minor matter.
- Has the employee objected to the disclosure of information? If so, what are his or her reasons for doing so? An employee's objection to the disclosure of information does not necessarily mean that it cannot be released. It is good practice, though, to inform employees that a request for access to information about them has been made and to take any objections into account.
- Would disclosure of the information be damaging to the employee? The likelihood of damage being caused to an employee will depend on the nature of the request and the employee's role within it. How sensitive is the information? In general, the more sensitive the information about an employee, the higher the threshold for its release. It is difficult to envisage circumstances in which information such as that concerning an employee's health, racial / ethnic origin, religious belief or sexual life could be disclosed in response to a FOI request.

7.10 Means by which information will be conveyed

When a requestor, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- The provision to the requestor of a copy of the information in, permanent form or in another form acceptable to the applicant,
- The provision to the requestor of a reasonable opportunity to inspect a record containing the information, and
- The provision to the requestor of a summary of the information in permanent form or in another form acceptable to the requestor.

The Trust shall, so far as reasonably practicable, give effect to that preference in accordance with the Act.

In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If the Trust determines that it is not reasonably practicable to comply with a preference expressed by the applicant in making their request, the Trust will notify

the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.

The Trust has established systems and procedures to monitor the provision of information arising from requests under the Act.

7.11 Refusal of Requests

As indicated above, the duty to confirm or deny does not arise if the Trust:

- i. Applies an exemption
- ii. Estimates that the cost of compliance with the request for information exceeds the appropriate limit,
- iii. Can demonstrate that the request for information is vexatious or repeated

If the Trust chooses to refuse a request for information under any of the above clauses, the requestor will be informed of the reasons for this decision within twenty working days. The requestor will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust.

If the Trust is to any extent relying on a claim that any provision of Part II of the Act relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt, a notice will be issued within twenty working days. The notice will:

- State that the request is exempt
- Specify the exemption in question, and
- State (if that would not otherwise be apparent) why the exemption applies.

Where the Trust is relying on a claim the notice will state:

- That any provision of Part II of the Act which relates to the duty to confirm or deny and is not specified as an absolute exemption is relevant to the request, or
- That the information is exempt only by virtue of a qualified exemption

At the time when the notice is given to the requestor where no decision as to the application of an exemption has been made, the notice will indicate this and contain an estimate of the date by which the Trust expects that a decision will have been reached.

7.12 Duty to Provide Advice and Assistance

The Trust will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so, to persons who propose to make, or have made, requests for information.

The Trust will ensure that the systems and procedures that are deployed to meet the duty also conform to the Code of Practice.

7.13 Transferring Requests for Information

Upon receiving the initial request for information, the Trust will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Trust will also advise the requestor that it does not hold part of the requested information, or all of it, and advise accordingly by

- Contacting the requestor and informing him or her that the information requested may be held by another public authority;
- Suggesting that the requestor re-applies to the authority which the original authority believes to hold the information;
- Providing him or her with contact details for that authority.

Prior to doing this, the Trust must be certain as to the extent of the information relating to the request which it holds itself.

The Trust recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body).

7.14 Consultation with Third Parties

The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 2018 ("the DPA").

Unless an exemption provided for in the Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence), the Trust will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party (that may be affected by a disclosure) do not give rise to legal rights, consultation may still be appropriate.

Where information constitutes "personal data" within the meaning of the DPA, the Trust will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

The Trust will undertake consultation where:

- The views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- The views of the third party may assist the authority to determine where the public interest lies

The Trust may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Trust will consider the most reasonable course of action for it to take, in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- The public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- The views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- No exemption applies and so under the Act's provisions, the information must be provided

Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

7.15 Duties and Public Sector Contracts

When entering into contracts the Trust will refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. The Trust will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above.

Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable by that, or any other person.

It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor information which the authority has provided to the contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

7.16 Accepting Information in Confidence from Third Parties

The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided. The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

7.17 Records Management

The Trust has a separate Records Management Policy with supporting systems and procedures that will ensure compliance with FOIA Section 46 Code of Practice – Records Management Code of Practice for Health and Social Care 2016

The Records Management Policy and Records Management Code of Practice for Health and Social Care 2016 will address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Trust. It is imperative that the Trust maintains a systematic approach to the management of its records in order to maintain compliance with the provisions of the FOI Act.

7.18 Round Robin Requests

Where the Trust receives a request that is identified as having, or is suspected to have, regional or national circulation and would benefit from wider consideration, advice may be sought from other Trusts FOI leads.

7.19 Appeals and Complaints

Complaints about the Trust's handling and disclosures of Freedom of Information requests and appeals against decisions not to supply exempt information, should be made to the Information Governance Lead and Data Protection Officer. If necessary, the Information Governance Lead and Data Protection Officer will escalate accordingly.

If local resolution is not achieved; the requestor can contact the Information Commissioner's Office:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

8 Consultation

This policy will be reviewed by Information Governance Sub Committee.

9 Training

This Freedom of Information Policy does not have a mandatory training requirement or any other training needs

The Information Governance Lead and Data Protection Officer have overall responsibility for maintaining training and awareness of Freedom of Information issues for all staff. Freedom of Information is referenced in the annual mandatory Data Security Awareness training required by all staff.

10 Monitoring Compliance and Effectiveness

Compliance will be monitored via monthly reports as part of a standing agenda item on IGSC with the Information Governance team responsible for any performance and improvement requirements.

11 Links to other Organisational Documents

Records Management Policy
Records Management Code of Practice for Health and Social Care 2016

12 References

Data Protection Act 2018
General Data Protection Regulations 2018
Freedom of Information Act 2000
Environmental Information Regulations 2004
Public Records Act 1958 and 1967
Re-use of Public Sector Information (PSI) Regulations 2005
Information Governance Framework

13 Appendices

Financial and Resourcing Impact Assessment on Policy Implementation

NB this form must be completed where the introduction of this policy will have either a positive or negative impact on resources. Therefore this form should not be completed where the resources are already deployed and the introduction of this policy will have no further resourcing impact.

Document title	Freedom of Information Policy
-----------------------	--------------------------------------

Totals	WTE	Recurring £	Non Recurring £
Manpower Costs	N/A	N/A	N/A
Training Staff	N/A	N/A	N/A
Equipment & Provision of resources	N/A	N/A	N/A

Summary of Impact:

Risk Management Issues:

Benefits / Savings to the organisation:

Equality Impact Assessment

- | | |
|--|-----|
| ▪ Has this been appropriately carried out? | YES |
| ▪ Are there any reported equality issues? | NO |

If "YES" please specify:

Use additional sheets if necessary.

Please include all associated costs where an impact on implementing this policy has been considered. A checklist is included for guidance but is not comprehensive so please ensure you have thought through the impact on staffing, training and equipment carefully and that ALL aspects are covered.

Manpower	WTE	Recurring £	Non-Recurring £
Operational running costs	N/A	N/A	N/A
Totals:	N/A	N/A	N/A

Staff Training Impact	Recurring £	Non-Recurring £
Totals:	N/A	N/A

Equipment and Provision of Resources	Recurring £ *	Non-Recurring £ *
Accommodation / facilities needed	N/A	N/A
Building alterations (extensions/new)	N/A	N/A
IT Hardware / software / licences	N/A	N/A
Medical equipment	N/A	N/A
Stationery / publicity	N/A	N/A
Travel costs	N/A	N/A
Utilities e.g. telephones	N/A	N/A
Process change	N/A	N/A
Rolling replacement of equipment	N/A	N/A
Equipment maintenance	N/A	N/A
Marketing – booklets/posters/handouts, etc	N/A	N/A
Totals:	N/A	N/A

- Capital implications £5,000 with life expectancy of more than one year.

Funding /costs checked & agreed by finance:	N/A
Signature & date of financial accountant:	N/A
Funding / costs have been agreed and are in place:	N/A
Signature of appropriate Executive or Associate Director:	N/A



Equality Impact Assessment (EIA) Screening Tool

Document Title:	Freedom of Information Policy
Purpose of document	To detail legal obligations of the Trust in relation to Freedom of Information legislation
Target Audience	<i>All staff</i>
Person or Committee undertaken the Equality Impact Assessment	<i>Tony Martin</i>

1. To be completed and attached to all procedural/policy documents created within individual services.
2. Does the document have, or have the potential to deliver differential outcomes or affect in an adverse way any of the groups listed below?

If no confirm underneath in relevant section the data and/or research which provides evidence e.g. JSNA, Workforce Profile, Quality Improvement Framework, Commissioning Intentions, etc.

If yes please detail underneath in relevant section and provide priority rating and determine if full EIA is required.

		Positive Impact	Negative Impact	Reasons
Gender	Men	N/A	N/A	
	Women	N/A	N/A	
Race	Asian or Asian British People	N/A	N/A	
	Black or Black British People	N/A	N/A	
	Chinese people	N/A	N/A	
	People of Mixed Race	N/A	N/A	
	White people (including Irish people)	N/A	N/A	
	People with Physical	N/A	N/A	

	Disabilities, Learning Disabilities or Mental Health Issues			
Sexual Orientation	Transgender	N/A	N/A	
	Lesbian, Gay men and bisexual	N/A	N/A	
Age	Children	N/A	N/A	
	Older People (60+)	N/A	N/A	
	Younger People (17 to 25 yrs)	N/A	N/A	
Faith Group		N/A	N/A	
Pregnancy & Maternity		N/A	N/A	
Equal Opportunities and/or improved relations		N/A	N/A	

Notes:

Faith groups cover a wide range of groupings, the most common of which are Buddhist, Christian, Hindus, Jews, Muslims and Sikhs. Consider faith categories individually and collectively when considering positive and negative impacts.

The categories used in the race section refer to those used in the 2001 Census. Consideration should be given to the specific communities within the broad categories such as Bangladeshi people and the needs of other communities that do not appear as separate categories in the Census, for example, Polish.

3. Level of Impact

If you have indicated that there is a negative impact, is that impact:			
		YES	NO
Legal (it is not discriminatory under anti-discriminatory law)		N/A	N/A
Intended			

If the negative impact is possibly discriminatory and not intended and/or of high impact then please complete a thorough assessment after completing the rest of this form.

3.1 Could you minimise or remove any negative impact that is of low significance? Explain how below:
N/A
3.2 Could you improve the strategy, function or policy positive impact? Explain how below:
N/A
3.3 If there is no evidence that this strategy, function or policy promotes equality of opportunity or improves relations – could it be adapted so it does? How? If not why not?
N/A

Scheduled for Full Impact Assessment	Date:
Name of persons/group completing the full assessment.	
Date Initial Screening completed	15/7/2020

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