

GOV11 Freedom of Information Policy

v 3

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Directorate / Department responsible (author/owner):	Trust Board Secretary
Contact details:	01934 647002
Brief summary of contents	The policy describes the means by which the Trust ensures compliance with the Freedom of Information Act 2000
Search criteria:	FOI
Executive Director responsible for Policy:	Director of Human Resources
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This document replaces (exact title of previous version):	V2
Title and date of committee/forum/group consulted during development :	Information Risk Management Group (formerly Health Informatics Committee)
Signature of Executive Director giving approval	
Intranet location:	Information Governance
Links to key external standards	Freedom of Information Act 2000 Data Protection Act 2018
Related Documents:	Records Management Policy Subject Access Requests Policy Information Governance Policy
Training Need Identified?	None additional

Version Control Table

Date	V	Summary of changes	Author
13.03.19	3	Updated and clarified responsibilities of key staff	Trust Board Secretary
13.03.19	3	Reduced reference to fees	Trust Board Secretary
13.03.19	3	Clarified relationship to data belonging to other organisations	Trust Board Secretary
13.03.19	3	Removed separate reference to environmental information	Trust Board Secretary
13.03.19	3	Removed reference to contractual inclusions since now included in NHS contract	Trust Board Secretary

Document Amendment Form – minor amendments

No.	Date	Page no	Amendment	Authorised by
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Ten or less minor amendments can be made before the document is revised.

Major changes must result in immediate review of the document

If printed, copied or otherwise transferred from the Trust intranet, procedural documents will be considered uncontrolled copies. Staff must always consult the most up to date version – located on the intranet.

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1. Introduction and purpose

This document sets out the policy for the Trust with regard to its legal obligation to comply with the Freedom of Information Act 2000 (FOIA), in providing access to the public (including service users), staff, media professionals, researchers etc requesting access to Trust information.

2. Scope

The Act does not enable access to own personal data, such as health or staff records. To access this information the request should be processed under the Data Protection Act 2018 in line with the Trust Policy on Subject Access Requests.

3. Explanation of terms

Within the context of Freedom of Information Act, the term ‘**information**’ means every piece of information held by the Trust, whether paper or electronic. It includes all draft documents, agendas, minutes, e-mails, diaries and even rough handwritten notes.

The Freedom of Information Act, Section 19, makes it a duty for every Public Authority to maintain and publish a **publication scheme** of key information released under the Freedom of Information Act. The Trust’s initial publication scheme was produced and approved by the Information Commissioner.

The general headings of the scheme are as follows:

- The NHS and How We Fit
- Who We Are
- Financial and Funding Information
- Corporate Information
- Aims, Targets and Achievements
- Our Services
- Reports and Independent Enquiries
- Policies and Procedures
- Public Involvement and Consultation
- Regular Publications and Information for the Public
- Complaints
- Human Resources
- Communications with the Press and Media Releases
- Environmental Information
- This Publication Scheme

Following the completion of a response to a request for information that is not covered by the publication scheme, consideration will be made as to whether this information should become part of the publication scheme.

4. Roles and Responsibilities

The **Director of Human Resources** has overall responsibility for the Freedom of Information Policy within the Trust.

The implementation and compliance with the policy is delegated to the **Trust Board Secretary**. This responsibility includes:

- Setting out a process for dealing with information requests
- Facilitating the provision of education and awareness for staff, ensuring that basic principles are part of Trust induction processes
- Developing the approach to publication and maintenance of the publication scheme
- Annual review of policy, process and code of practice (or more frequently if appropriate, with regard to changes in legislation or guidance from the Information Commissioner).

The Trust has designated the **FOI Administrator** as the Publication Scheme Co-ordinator.

The Trust Solicitor, as **Subject Access Lead**, is responsible for advising on response to any request that contains information about a living individual.

All **Trust employees** have a legal duty to preserve formal records of their official activities, which must be accurate, adequately named and indexed for easy retrieval or publication. Poor record management itself is not an offence, but it may lead to an inability to comply with Freedom of Information requirements. All Trust employees are required to respond to requests for information in a timely manner. A breach of these responsibilities could result in disciplinary action.

The Freedom of Information Act makes it an offence to alter, deface, block, erase, destroy or conceal any record held by the Trust, with the intention of preventing disclosure to all or part of the information that an applicant is entitled to. Penalties can be imposed on both the Trust and employees for non compliance with the Freedom of Information Act.

5. Policy details

Responding to a Request for Information. The FOI Co-ordinator will ensure that the Trust has a full and efficient process for responding to requests received. This will include awareness for all staff of how the Trust will manage a request.

Staff receiving requests for information should pass them to the FOI email address or directly to the FOI Co-ordinator. The Trust will fulfil any request that:

- Is received in permanent form, such as in writing or e-mail
- Contains the name and correspondence address for the applicant
- Includes sufficient information to enable the Trust to identify the information requested.

The Trust is under a duty to provide advice and assistance when a request is made and will take all reasonable steps to advise anyone whose request does not fulfil the above criteria, what is required by the Trust to progress their request.

When the Trust is in receipt of a request that fulfils the criteria above, it will respond within 20 working days. Within this time the Trust must:

- Identify what information it holds and whether any exemption applies in full or part to the information

- Advise the applicant on any exemptions it believes apply (in full or part) to the information, and inform them of their right to complain to the Information Commissioner's Office
- Provide any information not covered by an exemption to the applicant in any manner specified by the applicant within 20 days of receiving the request, provided any applicable fee has been received.

If an exemption applies, but the 'public interest test' deems the information should be released, then it will be provided 'within reasonable time'.

Vexatious/Repeat Requests. Should an applicant make 'repeated requests' for identical or substantially similar information, the Trust will inform the applicant in writing, that they will not fulfil the request. When responding in this manner the Trust will offer assistance to the individual by indicating why they consider the request is 'vexatious' or a 'repeat'. They will also indicate what recourse the applicant has if they are unhappy with this position.

Fees. The Trust will not comply with a request if it would mean exceeding the cost limit set out in the Regulations (10% of the prescribed costs, up to a limit of £450), unless agreement on costs over and above the initial cost limit can be reached with the applicant.

(Note prescribed costs relates to reasonable costs incurred (such as staff time) in determining whether information is held, locating the information and retrieving it. If costs incurred are greater due to poor record management, this is unlikely to be viewed as 'reasonable' when calculating costs).

Information Held by Other Organisations. If the response to a request would contain information provided by another organisation, the Trust will not release this but will ensure that it is clear to the applicant where this information resides, so that they can, if they require, raise a request to the source organisation.

If the response to a request is that the Trust does not hold any relevant information, the Trust will endeavour to direct the applicant to organisations who may hold the information they seek.

Exemptions and the Public Interest. The Freedom of Information Act sets out 23 exemptions to the general right of access to information. Some of these are 'absolute', however the majority are 'qualified', in that if the release of information is deemed to be 'in the public interest', then the exemption does not apply.

Exemptions will be decided on a case by case basis, with support from the Trust Board Secretary or Director of Human Resources. Exemptions can be applied in full or part to information related to a request. The full list of exemptions can be found in Part II of the Act, at sections 21 to 44 (see Appendix A for a summary).

Enforcement. The Trust will ensure in any communications with applicants that they are informed they can lodge a formal complaint, in line with the Trust's complaint procedure and/or appeal to the Information Commissioner's Office, if they are unhappy at any time with the conduct of the Trust in responding to their request.

6 Dissemination

The policy will be available on the Trust intranet site in the policy library. A trust- wide email will be issued to all staff to inform them of the policy update.

7. Implementation

The document will be referred to at induction and in relevant training and development programmes.

8. Monitoring Compliance and Effectiveness

Table 1. Mandatory Elements of Monitoring Compliance.

Element to be monitored	Timeliness of Trust response to FOI requests
Lead	FOI Co-ordinator
Tool	FOI excel database – managed by Co-ordinator
Frequency	Quarterly reporting
Reporting arrangements	Senior Management Committee
Acting on recommendations and Lead(s)	Directorate Boards
Change in practice and lessons to be shared	Quarterly reporting to Senior Management Committee by the Trust Board Secretary and policy review

9. Reference and bibliography

- Freedom of Information Act 2000
- Data Protection Act 2018

10. WAHT associated records

- Records Management Policy
- Subject Access Requests Policy
- Information Governance Policy

11. Staff compliance statement

All staff must comply with the Trust-wide procedural document and failure to do so may be considered a disciplinary matter leading to action being taken under the Trust's Disciplinary Procedure. Actions which constitute breach of confidence, fraud, misuse of NHS resources or illegal activity will be treated as serious misconduct and may result in dismissal from employment and may in addition lead to other legal action against the individual concerned.

12 Equality and Diversity statement

The Trust aims to design and implement services, policies and measures that meet the diverse needs of users of our services, population and workforce, ensuring that none are placed at a disadvantage over others.

Equality Impact Assessment Screening Tool

To be completed for any procedural document when submitted to the appropriate committee for approval.

		Yes/No	Rationale
1	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2	Is there any evidence that some groups are affected differently?	No	
3	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?	No	
4	Is the impact of the policy/guidance likely to be negative?	No	
5	If so can the impact be avoided?	No	
6	What alternatives are there to achieving the policy/guidance without the impact?	No	
7	Can we reduce the impact by taking different action?	No	
8	Actions identified following screening process	None	
9	Screening identified a full impact assessment.	No	

If you have identified a potential discriminatory impact of this policy/procedure, please refer it the appropriate Director in the first instance, together with suggested actions required to avoid/reduce this impact. For advice in respect of answering the above questions, please contact the H.R Department. For advice on completion of this form please contact the Governance Team.

Appendix A: Exemptions to Freedom of Information Act requests

1 Exemptions Where the Public Interest Test Applies

- Information already reasonably accessible
- Information intended for future publication
- National security (other than information supplied by or relating to named security organisations, where the duty to consider public interest disclosure does not arise)
- Defence
- International relations
- Relations between the UK Government, the Scottish Executive, the Welsh Assembly and the northern Ireland Executive
- The Economy
- Investigations and proceedings conducted by public authorities
- Law enforcement
- Court Records
- Audit functions
- Parliamentary Privilege
- Formulation of Government policy etc
- Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
- Communications with Her Majesty etc, and Honours
- Health and Safety
- Environmental information
- Personal information (the Trust is only required to consider release in the public interest: where the information concerns a third party and a 'Section 10 Notice' under the Data Protection Act 1998, applies to that information; where the information concerns a third party, who would not be entitled to access that information himself because a 'subject access exemption' applies to it under the Data Protection Act 1998)
- Confidentiality
- Legal professional privilege
- Commercial interests
- Prohibitions disclosure

The 'Absolute Exemptions' These are the exemptions where, if the exemption applies, it is not necessary to go on to consider disclosure in the public interest:

- Information accessible to applicant by other means (therefore, all information accessible through a Publication Scheme will be covered by this exemption).
- Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified). There is a separate appeals mechanism against such certificates.
- Court records etc.
- Personal information (where the applicant is the subject of the information. The applicant already has the right of 'subject access' under the Data Protection Act 1998; where the information concerns a third party, and if disclosed, would likely to endanger the physical or mental health or safety of any individual. If disclosed would breach a duty of confidentiality owed to another).
- Information provided in confidence.
- Parliamentary privilege (a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliaments, in respect of the House of Lords, is conclusive proof that the exemption is justified).

- Prejudice to effect conduct of public affairs (only applies to information held by the House of Commons or House of Lords).
- Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of Court).