

**TRUST POLICY AND PROCEDURES FOR THE MANAGEMENT OF  
THE FREEDOM OF INFORMATION ACT**

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<b>To be read in conjunction with:</b> Trust's Records Management Policy, Information Governance Policy; the Trust's Retention and Destruction Schedule, and Professional Codes of Conduct				
<b>In consultation with and date:</b> Information Governance Steering Group				
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## **Freedom of Information Act 2000**

### **1. INTRODUCTION AND OBJECTIVE**

The University Hospitals of Derby and Burton NHS Foundation Trust has a legal obligation to comply with the legislation of the Freedom of Information Act 2000 (FOIA). It allows members of the public to question the decisions of public authorities more closely, and to prove that the services the Trust provides are efficiently and properly delivered by providing openness to the public. The policy ensures that all staff are aware of their responsibilities under the FOIA

FOI links to CQC Well Led KLOE6 and activity is reportable under the Data Security and Protection Toolkit. The Trust has to respond to an FOI request within 20 working days of receipt in order to meet compliance. The target compliance rate expected by the Information Commissioner is 90%. If the Trust were to fall below this, potentially, the Trust could receive a visit from the Commissioner's Office, who would inspect the whole of the Trust's Information Governance and/or a fine could be applied. All applications are to be treated as applicant and purpose blind, in order that they are answered confidentially, fairly, and in a non-prejudice manner.

### **2. WHAT IS AN FOI REQUEST?**

The FOIA provides the legal right to anyone; whether a private individual or an organisation, to obtain information that a public organisation holds; this has to be provided within the timeframe of 20 working days from the date of request as specified in the Act. Information can be held in any format and from any source in the Trust. Public authorities are not required to create new information in order to comply with a request for information; they only need to consider information already in existence at the time a request is received.

A valid request under the Act must be submitted in writing. The request must include the full name of the applicant together with an address. If anyone makes a verbal request for information, whether they quote the FOIA or not, they should be advised and supported to make a written request to the Trust.

If an employee receives what appears to be an FOI request (i.e. asking for generic Trust information), they should forward the request to the FOI Officer immediately. As a request does not have to mention the FOIA, it is vital that all members of staff are trained to recognise a request.

If the request is for environmental information, the Trust would need to consider the provisions of the Environmental Information Regulations Act (EIRA) and respond accordingly. EIRA requests should be immediately forwarded to the FOI Officer,

The policy does not apply to independent third parties; however, third parties are expected to adhere to the fact that the Trust has an obligation to publish information, which could contain their information irrespective of contents of contract.

### **3. FEES AND CHARGES**

Section 9 of the FOIA allows public authorities, under some circumstances, to charge a fee for providing information in response to a request; these can include costs incurred by the Trust for producing information, as well as fees applied under Section 12 of the FOIA, Exceeding the appropriate limit which allows a public authority to refuse to process a request, where it estimates it would exceed the appropriate limit to comply with the request in its entirety. The appropriate limit is currently £450.00 for public authorities. This equates to 18 hours of work for one person; irrespective of the individual's hourly rate. When Section 12 is applied, advice and assistance should be offered to the applicant to help them refine their request, so that it can be processed within the appropriate limit. For further information refer to [https://ico.org.uk/media/1635/fees\\_cost\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf)

### **4. CLARIFICATION**

If the FOI Officer contacts the applicant for clarification of their request, the whole request is placed on hold until the applicant confirms their request. Once confirmation is received, the compliance date should be amended to 20 working days from the date confirmation was received. If the applicant does not clarify their request by the initial expiry date, then the file is closed; if the applicant contacts the Trust after this date, it should be processed as a brand new request.

### **5. APPEALS AND COMPLAINTS**

In order to conform to Section 45 of the Code of Practice (COP), public authorities should implement an internal review procedure.

### **6. PUBLICATION SCHEME**

Public organisations are required to produce a publication scheme. The Scheme allows public access to routinely published information.

The organisation should:

- Pro-actively publish information which is held within the categories of the scheme.
- Review and update on a regular basis.
- Publish datasets held by the authority together with maintaining appropriate revisions; this should be in an electronic format capable of re-use. If any information in the dataset is subject to copyright, owned by the authority, this should be made available for re-use under specified license.

### **7. TRAINING**

The basics of the FOIA are explained within this policy, and are contained within the department's manual. Staff are required to complete mandatory, annual, Information Governance training; which includes a section on the FOIA.

The FOI Officer will ensure that stakeholders involved with the FOI process are trained, and informed regarding revisions to the Act as deemed appropriate.

## **8. POLICY REVIEW PROCESS**

This Policy will be reviewed every three years by the Trust's FOI Officer, or amended accordingly as a result of changes in legislation, process, or guidance.

## **9. DUTIES AND RESPONSIBILITIES**

### **Information Commissioner's Officer (ICO)**

The ICO enforces and manages the FOIA; following up any official complaints made to them from applicants regarding processes/responses, which they feel has been dealt with inappropriately.

### **Chief Executive**

The Chief Executive is ultimately responsible for FOI within the organisation.

### **Trust Secretary**

The Trust Secretary is responsible for implementing operational management of the FOIA and for FOI representation to the Trust Board.

### **Executive Directors**

Executive Directors are approached infrequently to review responses prior to disclosure; they, or their acting deputy, have responsibility for checking, and offering further advice if necessary in a timely manner; aware of the 20 week timeframe and date of compliance.

### **Non-Executive Directors**

When the Trust is asked by an applicant to conduct an internal review into a disclosed response, a Non-Executive Director (NED) is asked to review the pathway of the FOI, and determine whether the original request was processed and answered correctly. The NED should conclude the response within 20 working days; allowing the FOI Officer time to send the outcome of the review to the applicant.

### **Divisional Directors**

Divisional Directors have ultimate responsibility for FOI responses provided by their Divisions. They must ensure that FOI maintains a high profile within their work plans, and provide any required support to the FOI process. Designated Divisional Directors are responsible for agreeing proposed responses, as required, in the absence of the Executive Director.

### **Senior (GM) Managers**

Senior managers are responsible for approving information, provided by their teams and returning the response to the FOI Officer within the specified time.

### **FOI Officer**

- The Trust's FOI Officer is responsible for managing the FOI process for the Trust, in accordance with this Policy and legislation.
- Developing and maintaining appropriate system to log and track FOI requests; abiding by the appropriate timescales.

- Processing FOI requests received in accordance with this Policy. Monitor compliance; applying, and advising use of exemptions.
- The FOI Officer will draft and review the reply. Media responses are to be shared with the Communications Team for their comments. If the FOI Officer deems necessary, they will obtain authorisation for disclosure of responses from the relevant Executive Director, or their designated deputy.
- To publish anonymised, approved responses on the Trust's website Disclosure Log.
- Maintain and revise the Trust's Publication Scheme on a regular basis.
- Raise staff awareness of the FOIA, and provide continual learning/deliver training Trust-wide.

### **Communications Team**

To approve/provide advice for any proposed responses they receive from the FOI Officer without delay.

### **Information Governance Steering Group**

The Information Governance Steering Group (IGSG) reports to the Audit Committee and Trust Operation Group (TOG); who in turn report to the Trust Board. The group is responsible for monitoring progress against the Data Security and Protection Toolkit (DSPT); which includes the FOIA.

IGSG meetings are held on a monthly basis. The FOI Officer provides and presents a bi-monthly written report to the group; which incorporates activity, compliance and news.

Any concerns in respect of FOI would be reported to SIRO and the Trust Secretary to review and address accordingly.

### **Senior Managers (GM's)/Stakeholders**

- It is the responsibility of the General Manager, or designated lead, to sign-off information from their area, before sending to the FOI Officer.
- Managers should provide their team members with adequate knowledge and support, in order for them to produce the required information.
- If there are any queries, or further clarification needed relating to the request, the FOI Officer should be notified immediately.

## **10. RE-USE OF INFORMATION**

Relates to information the Trust has produced being re-published, or to produce a new resource.

The Public Sector Information Regulations 2015 (RPSI) is intended to encourage re-use of public sector information.

## **11. DEALING WITH REQUESTS FOR RE-USE**

Applicants must submit their request in writing, together with their name and address. They must specify the information they want to re-use, together with intended purpose.

The Trust should permit re-use in response to a request, unless the content was exempt.

The Trust must make the information for re-use available in the format in which it is held. Information should be made available in a machine readable format.

## **12. LICENSES**

The Trust may impose conditions for re-use, but the conditions must be as open and non-restrictive as possible.

The recommended license is the Open Government License (OGL); this allows re-use of public sector information without charge; for any purpose commercial or otherwise, with minimal conditions.

The Trust must not enter into exclusive licensing arrangements.

## **13. COMPLAINTS**

If an applicant wishes to complain how the Trust handled their request for re-use, they should submit their complaint, in writing, to the Trust's FOI Officer or Chief Executive. The Trust will process the complaint in accordance with the Trust's Internal Review Procedure.

## **14. DATASETS**

If an applicant makes an FOI request in respect of information that forms part of a dataset held by the public authority, and expresses a preference for the information in electronic form, the public authority must provide the information in that form; which is capable of re-use.

## **15. ISSUING INFORMATION**

The FOI Officer will issue a response in the requested format within 20 working days, together with an accompanying letter.

## **16. AUDIT PROCESSES**

The FOI Officer will record relevant statistics for audit purposes, and make anonymised responses publically available on the Trust's Publication Scheme.

## **17. WHO TO CONTACT**

For queries and information regarding the Act, or to book training, contact the Trust's FOI Officer – Telephone 01332 (7)86431 Email [uhdb.foi@nhs.net](mailto:uhdb.foi@nhs.net)

## **FOI PROCESS**

### **RECEIVING REQUESTS**

FOI requests can potentially be received by any member of staff within the Trust. Therefore, it is important to consider whether a written request for information is an FOI. Requests should state the name of the applicant, (pseudonyms are not permitted), together with an address for correspondence.

The Trust's FOI Officer is responsible for processing FOI requests. If necessary, they will approach the applicant for further clarification.

The Trust's FOI Officer will liaise with the Communications Team regarding applications from the media, or escalate any responses which they consider may have an adverse effect for the Trust.

### **RECORDING REQUESTS**

When a request is received, a hard copy is printed and a processing slip attached. The compliance date is calculated. An acknowledgement is sent to the applicant. The request is logged on the spreadsheet, and question(s) sent out to the Divisional leads.

### **VALIDATION PROCESS**

The FOI Officer will identify whether the information requested is available elsewhere, or already exists in the public domain.

The FOI Officer will consider whether any exemptions are applicable. If so, the applicant will be informed, together with the reason why the information is considered exempt under the Act.

The FOI Officer will determine whether the request is vexatious; if so, the Trust is not obliged to comply with any subsequent request from the same source; unless a reasonable interval of time has lapsed between the requests.

Assuming the request does not fall into the above categories, the FOI Officer will consider whether any charges are appropriate; and inform the applicant of any likely level of charge. If the applicant wishes to proceed, to invoice them accordingly. If charges apply, the application will be placed 'on hold' until the invoice has been paid.

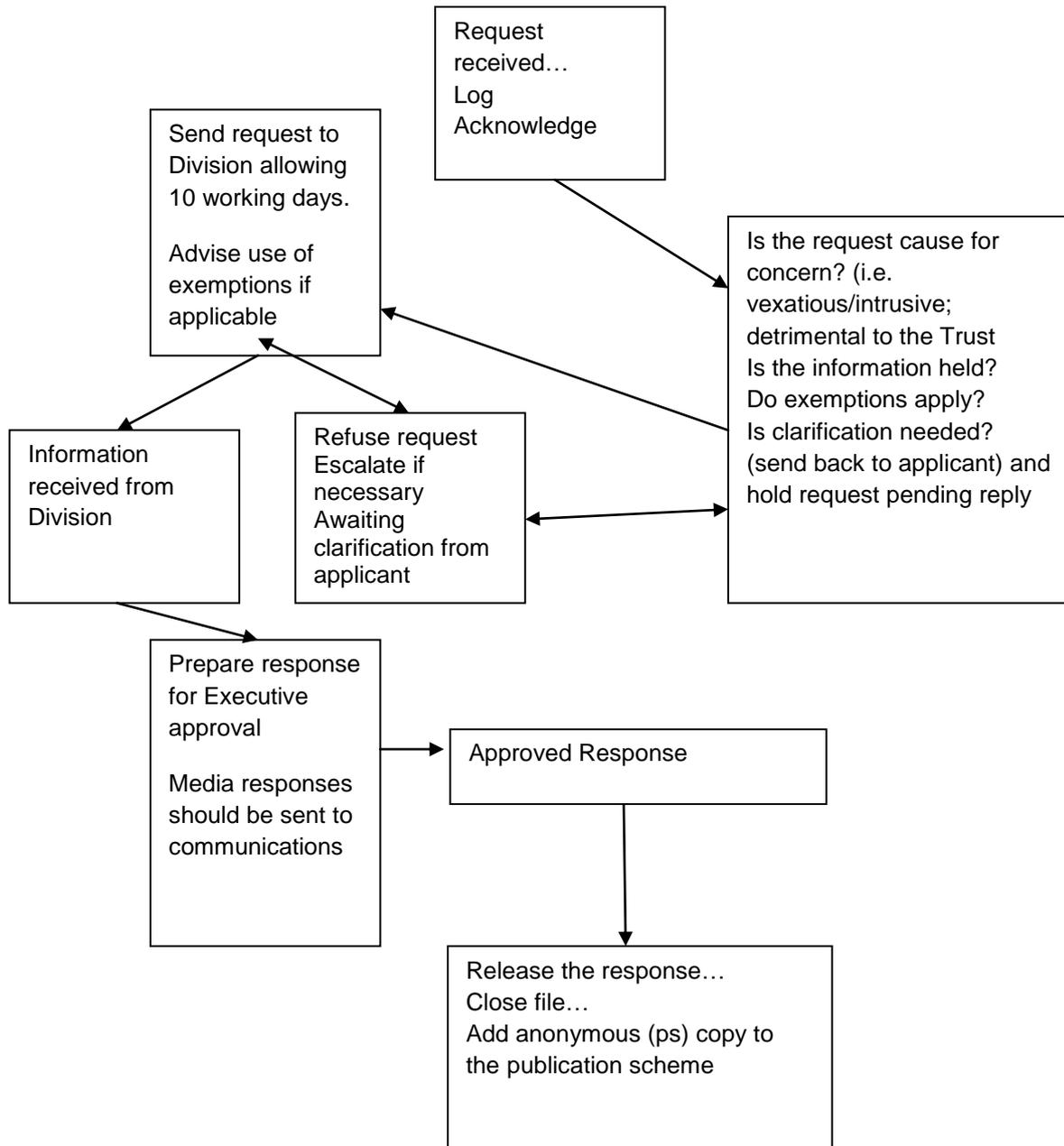
### **RETRIEVAL PROCESS**

The FOI Officer will ask Divisions to respond within 10 working days.

### **ANALYSIS OF INFORMATION**

The FOI Officer will assess, validate and compose a response to the applicant. If this is a media response, the proposed response will be shared with the communications team. If the FOI Officer considers the content of the response may have adverse repercussions for the Trust, they will escalate to the relevant Executive for approval.

## FOI FLOWCHART/PROCEDURE FOR HANDLING FOI REQUESTS



## **INTERNAL REVIEW**

To ensure that the correct internal review process is followed.

At an applicant's request, in writing, an internal review is an opportunity for the Trust to revisit the enquiry and response. The Commissioner considers that a reasonable time for completing an internal review is 20 working days; there may be a small number of exceptional circumstances, where it could be reasonable to take longer. In those circumstances, the Trust should notify the applicant and explain why more time is needed. Under no circumstances should this exceed 40 working days.

A request for an internal review will only be undertaken within six months from the date the response.

An internal review should be treated as if it was a completely new request.

The ICO's guidance states that, public authorities should reconsider exemptions, the public interest test, and the circumstances as they existed at the time of request.

The request for review will be undertaken by a designated Non-Executive Director (NED) of the Trust.

The only involvement the Trust's FOI Officer will have in a review is to present the case to the NED; this is to ensure that a totally independent review is undertaken.

The Trust's FOI Officer can seek views of an independent or external expert, and provide these to the NED, together with any applicable ICO Decision Notices.

Internal reviews must be a fair and impartial means of reviewing decisions made during the original consideration.

All internal reviews must consider information released, against what was requested, making a full review of the file.

It is good practice that the NED discusses the decisions with stakeholders, in order to build a full picture as to how decisions were made in the original response.

A full audit trail should be maintained of the progress, together with the outcome of the review; as these may be required by the ICO in the event of further escalation.

If the NED is unable to resolve the complaint, the FOI Officer will refer the case to the IGSG for consideration.

The FOI Officer should keep the applicant fully informed throughout the review process.

After concluding the internal review, the NED should discuss their conclusions with the FOI Officer, to ensure that any internal processes which may need to be altered are fully reviewed.

An internal review can have two outcomes:

- The original decision is reversed (or partially reversed)
- The original decision is upheld

Where the original decision is reversed (or partially reversed) the applicant must be informed, and provided with an estimation of when they can expect a revised response. When the original request is upheld, the applicant must be informed of their rights to appeal, under Section 50 of the FOIA, to the ICO. An explanation of the decision must be provided to the applicant.

If the outcome is decision to uphold the earlier conclusion. Section 17 of the Act (Refusal Notice) must be issued, together with a written response confirming decision upheld, and the reason why Section 17 of the FOIA is to be applied.

Irrespective of the outcome of the internal review, the Trust must ensure that the final outcome is recorded.

## **INTERNAL REVIEW PROCESS**

The complaint should be logged on the date of receipt, and the internal review acknowledgement sent to the applicant.

The Freedom of Information Officer will collate the file, enclosing all correspondence; together with a summary explaining the complaint and pass to an investigating officer, who should be a non-executive director (NED).

If the NED is unable to reach a decision regarding the review, they should inform the FOI Officer, who will then approach the IGSG for decision.

Once a decision has been reached, the FOI Officer should write to the applicant confirming the Trust's response.

If information has changed, the publication scheme should be updated with an anonymised version accordingly.

## **References**

- Data Protection Act 2018
- Freedom of Information Act 2000
- HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities, Department of Health 1999
- Public Records Acts 1958 and 1967
- Lord Chancellors Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002
- Lord Chancellors Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002
- Section 46 of the Freedom of Information Act 2000

**EXEMPT INFORMATION  
UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000**

There are two types of exemption:

- (a) Absolute - does not require a test of prejudice to balance public interest.
- (b) Qualified - by the public interest test; to decide whether it is in the balance of public interest not to disclose information.

**Absolute exemptions are:**

- Section 21 Information accessible to applicant by other means
- Section 23 Information supplied by, or relating to, bodies dealing with security matters.
- Section 32 Court Records
- Section 34 Parliamentary Privilege
- Section 36 Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40 Personal Information (where disclosure may contravene the Data Protection Act 2018)
- Section 41 Information provided in confidence
- Section 44 Prohibitions on disclosure

**Exemptions qualified by the public interest test are:**

- Section 22 Information intended for future publication
- Section 24 National Security
- Section 26 Defence
- Section 27 International Relations
- Section 28 Relations within the United Kingdom
- Section 29 The Economy
- Section 30 Investigations and proceedings conducted by public authorities
- Section 31 Law Enforcement
- Section 33 Audit Functions
- Section 35 Formulation of Government Policy
- Section 36 Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37 Communications with Her Majesty, etc. and honors
- Section 38 Health and Safety
- Section 39 Environmental Information
- Section 42 Legal Professional Privilege
- Section 43 Commercial Interests

**GLOSSARY OF TERMS**

**Absolute exemption** – applied to information that does not have to be released to the applicant either by publication scheme, or by general right of access under the Act. An absolute exemption does not require a test of prejudice, or balance the public interest.

**Applicant** - the individual(s), group, or organisation requesting access to information pursuant of the FOI Act.

**Dataset** - Information comprising of a collection of data held in electronic form.

**Duty to confirm or deny** - any person making a request for information to a public authority is entitled to be informed, in writing, whether or not the organisation hold the information requested.

**Fees Notice** – a written notice issued to an applicant; stating that a fee is payable which exempts public authorities from being obliged to disclose information, until the fee has been paid. The applicant will have three months from the date of service to pay the fee before the request lapses.

**Fees Regulations** – national regulations 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.

**General right of access** - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether that authority holds the information requested; if it is held, to have that communicated to them.

**Information Commissioner** - The Information Commissioner enforces and oversees the GDPR and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament; it has an international role as well as a national one. In the UK, the Commissioner has a range of duties including the promotion of good information handling, and encouragement of codes of practice.

**Lord Chancellor's Department** - The Lord Chancellor's Department is responsible for the efficient administration of Justice in England and Wales.

**Public authority** – Publically owned organisations.

**Publication Scheme** – Information which is routinely, and regularly published for public view.

**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.