

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

|  |                                 |               |   |   |
|--|---------------------------------|---------------|---|---|
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| <b>To be read in conjunction with:</b> Records Management Policy; Information Governance Policy; Professional Codes of Conduct                                 |                                 |               |   |   |
| <b>In consultation with and date:</b> Information Governance Steering Group (2022) Information Governance, Cyber Security and Disaster Recovery Group (IGCSDR) |                                 |               |   |   |
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| <b>Contact for Review</b>  |                                 |               | Freedom of Information Manager  |   |
| <b>Executive Lead Signature</b>  |                                 |               | <br>William Monaghan, Executive Chief Digital Information Officer |   |

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## 1 Introduction

The Freedom of Information (FOI) Act was passed in 2000 and replaces the Open Government Code of Practice that has been in place since 1994. The Act gives the public a general right of access to almost all types of recorded information held by public authorities. The Act came into full effect on 01 January 2005.

The Act places a statutory obligation on all public bodies to publish details of all recorded information that they hold and to allow the general public to have access to this information on request, except where an exemption applies e.g. personal or other confidential data.

The University Hospitals of Derby and Burton NHS Foundation Trust (the Trust), recognises the importance of the Act and it will ensure that appropriate systems are put in place to publicise what recorded information is kept by the Trust and how this information can be accessed on request by the general public.

## 2 The FOI Act

The main features of the FOI Act are:

- A general right of access to information held by public authorities.
- Sets out exemptions from the duty to provide information.
- Place a requirement on public authorities to exercise discretion; they may have to determine not only whether an exemption applies but also the extent to which it may apply (some exemptions are conditional and depend on where the balance of 'public interests lie').
- Make arrangements in respect of costs and fees.
- Places a duty on public authorities to adopt publication schemes.
- Public authorities must make arrangements for enforcement and appeal.
- Places a duty to provide advice and assistance to people who wish to make, or have made requests for information, and
- Outlines Codes of Practice.

The FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. It does not oblige public authorities to retain information which is no longer useful to the authority.

The FOI Act is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.

The target compliance rate expected by the Information Commissioner is 90%. All applications are to be treated as applicant and purpose blind, in order that they are answered confidentially, fairly, and in a non-prejudiced manner.

### **3 Definitions**

In the context of FOI, 'information' is defined as each item of material held by the Trust in paper or electronic form. This includes but is not limited to, all draft documents, agendas, minutes, emails, diaries, handwritten notes and all other recorded information.

### **4 Duties and Responsibilities**

#### **4.1 Organisational Responsibilities**

The Trust will:

- Publish and maintain a Publication Scheme.
- Provide relevant FOI training for all staff with FOI responsibilities.
- Provide clear lines of reporting and supervision for compliance with FOI.
- Develop and maintain clear procedures for recognising and responding to requests for information under FOI in a timely manner to meet the requirement to respond within 20 working days
- Support a comprehensive Records Management Strategy that compliments FOI.

#### **4.2 Corporate Responsibilities**

The Trust recognises its responsibility under the Act to provide the general right of access to information held. Overall responsibility for this policy is with the Chief Executive.

The FOI Act makes it an offence to alter, deface, block, erase, destroy or conceal any information from disclosure which is held by the Trust.

The Trusts Information Governance, Cyber Security and Disaster Recovery Group (IGCSDR) is responsible for oversight and monitoring of FOI.

#### **4.3 Executive Manager Responsibilities**

##### **Chief Executive**

The Chief Executive is, ultimately, responsible for the FOIA. They are also the Trust's qualified person as set out in section 20.

##### **The Executive Director of Corporate Development**

When the Trust is asked by an applicant to conduct an internal review into a disclosed response, the Executive Director of Corporate Development is asked to review the pathway of the FOI, to determine whether the original request was processed and answered correctly. The Executive Director of Corporate Development should conclude the response within a timely manner; allowing the FOI Manager time to send the outcome of the review to the applicant.

#### **4.4 Senior Manager Responsibilities**

##### **Head of Information Governance**

The Head of Information Governance is responsible for the Freedom of Information Manager and

for FOIA representation to the Trust Board.

## **Departmental Managers**

Senior managers of departments, or their designated FOI lead, are responsible for approving the information, provided by their teams and returning the response to the FOI Manager within the specified timeframe.

### **4.5 Manager Responsibilities**

#### **The Freedom of Information Manager**

The Freedom of Information Manager is responsible to oversee the implementation of this Policy and will establish systems, procedures and operational processes to support this function as necessary, including:

- Managing the FOI process for the Trust, in accordance with this Policy and FOI / EIR legislation
- Maintaining and revising the Trust's Publication Scheme on a regular basis
- Raising staff awareness of FOI and providing continual learning

### **4.6 Employee Responsibilities**

#### **Trust Staff**

Penalties can be imposed upon The Trust and its staff for breaching the FOI Act.

All employees will, through appropriate training and responsible management:

- Observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records.
- Provide the Freedom of Information Team with full and appropriate responses to FOI requests within the timescales outlined by the FOI team.
- Undertake any formal FOI training which the Trust deems to be relevant to that persons role
- Be aware that ultimately the general public may have access to any piece of information held within the Trust and must pay due regard to how they record information as part of their normal duties.
- Understand that breaches of this Policy may result in disciplinary action, including dismissal.

If an employee receives what appears to be an FOI request (i.e. asking for generic Trust information), they should forward the request to [uhdb.foi@nhs.net](mailto:uhdb.foi@nhs.net) 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, this forms part of Information Governance training.

## **5 Managing Requests for Information**

It is the responsibility of the Freedom of Information Manager to ensure that the Trust has sufficiently efficient processes to support the FOI agenda and assure that all requests are managed correctly.

Each department of the Trust may be required to nominate an FOI representative to liaise with the FOI Team in the provision of information as required.

Final draft responses to FOI requests must be approved for issue by a member of staff operating at a Senior Manager level, a deputy in their absence or a member of staff with delegated authority.

## **6 Defining a Valid FOI Request**

As defined in Section 8 of the FOI Act, to meet all the requirements of a valid FOI request, a request must:

- Be in writing
- State the name of the applicant and a valid address for correspondence (e-mail address is valid)
- Describe the information requested
- Be received in a legible form
- Be capable of being used for subsequent reference

The term 'in writing' covers requests submitted by letter and electronic form, including those sent via Social Media (e.g. Twitter and Facebook) and the request does not have to make any direct reference to the Act, or be the sole or main theme of the requester's correspondence.

When determining whether or not a name and/or address is valid, where a requester's name is an obvious pseudonym or only includes a part of their real name (e.g. Sam@123 or Smith@456) then the request will only be valid if their real name is visible elsewhere in the body of the request (e.g. Signed from Sam Smith)

A request also becomes valid when:

- The Freedom of Information Act is mentioned in correspondence
- When information cannot be supplied under another legislative access regime or Business as Usual criteria within 20 working days

## **7 Clarification**

There may be instances where it is necessary to contact the applicant to seek clarification, either regarding their name or the information they are seeking, in order for the request they have made to meet the requirements set out in section 8 of the Act.

In the event of more information being required to process a request, there should be no undue delay in contacting the requestor. The FOI Manager will contact the applicant to request further information or clarification of the information being sought by their request. The whole request is placed on hold until the applicant provides a satisfactory reply constituting a valid request. Once confirmation is received, the compliance date will be amended to a further 20 working days from the date confirmation was received. If the applicant does not clarify their request, within 40 working days from the date that the clarification was requested, the file is closed and the requestor and relevant department notified via email; if the applicant contacts the Trust after this date, it should be processed as a new request.

## **8 Time Limits for Compliance with Requests**

The Trust has systems and procedures in place to ensure that it complies with the duty to confirm or deny whether it holds requested information, and to provide a response to requests within the statutory timeframe of twenty working days from the point of a valid request being received.

The Trust may choose to apply an exemption to any information, to refuse a request if it is vexatious or repeated, or exceeds the appropriate limit for costs of compliance. A formal refusal notice must be issued within twenty working days informing the applicant of this decision.

Trust staff are responsible for providing the requested information in a timely and accurate manner. When requesting information, the staff member will be given an initial 10 working days to source and return the information requested if no information is received by 10 working days, email chasers will be sent to the staff member on working day 10 and working day 12, if by working day 15 there is still no response it will be escalated to the Head of the relevant department for action.

## **9 Issuing Information**

The FOI Manager will issue the response in the requested format, within 20 working days, which will be calculated from the next working day after the FOI request was received. A fully completed FOI does not have to be sent within the 20 working days; if a response has 30% or more completed, this is not best practice, but acceptable and can be sent to the applicant, and any additional information in response to the request can follow, there is no time limit on getting the remaining answers back.

## **10 Refusal of Requests**

The duty to confirm or deny whether information is or is not held does not arise if:

- An exemption applies under section 2 of the Act
- A fees notice has been issued and the fee has not been paid
- An estimate demonstrates that the cost of compliance will exceed the appropriate limit
- It can be demonstrated that the request is repeated or vexatious

Upon refusal of a request for information, the applicant will be informed of the reasons for this decision within twenty working days, and at the same time, will be informed of the procedures for making a complaint about the discharge of the duties of the Trust and their rights in relation to FOI.

If the Trust is reliant upon an exemption under part 2 of the Act, relating to the duty to confirm or deny, a notice will be issued within twenty working days, which will state that fact and specify the exemption being applied and why it applies.

## **11 Redaction of Information**

Redaction is a process which is carried out to make information unreadable or to remove exempt information from a document. This is achieved by blocking out individual words, sentences or paragraphs or by removing whole pages or sections of information prior to the release of the document.

However, if so much information is deemed to be exempt and the document becomes illegible the entire document should be withheld.

When responding under FOI you must ensure you state what exemption the information has been redacted under and must be done for every exemption.

All redactions must be carried out by the team/staff member/Information Asset Owner of the requested information.

## 12 Internal Reviews

Applicants may ask the Trust to revisit a request for information and the response provided, this is called an Internal Review. Internal Reviews must be a fair and impartial means of reviewing the decisions made, rationale, public interest, timeliness and all other relevant aspects of the request.

An internal review can only be requested within two months from the date the response was originally disclosed and must be made in writing.

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.

The requested internal review will be undertaken by the Executive Director of Corporate Development. In their absence, the request for Internal Review will be forwarded to the Executive Chief Digital Information Officer, who is also the Trust's SIRO (Senior Information Risk Owner). They will either undertake the Internal Review or designate a nominated deputy.

The only involvement the FOI Manager will have in an internal review is to present the case and any applicable documentation to the Executive Director of Corporate Development; this to ensure a totally independent review is undertaken.

If the Executive Director of Corporate Development is unable to resolve the complaint, the FOI Manager will refer the case to the Chief Executive for consideration.

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.

The FOI Manager should keep the applicant fully informed throughout the review process; sending an acknowledgement to the applicant in the first instance, which provides a date of when they can expect to receive an outcome of the Trust's review.

After concluding the internal review, the Executive Director of Corporate Development should discuss their conclusions with the FOI Manager, 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 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.

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

Applicants who are not satisfied with the outcome of the Internal Review into their FOI request may ask the Regulator to review how the Trust has performed in response to the complainant's request.

### **13 Vexatious/Repeat requests**

Should an applicant make a 'vexatious' or 'repeated' request for identical or substantially similar information, The Trust will inform the applicant in writing that it 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 repeated. The Trust will also indicate what recourse the applicant has if they are unhappy with this position.

### **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 Environmental Information Regulations**

If the request is for environmental information, including but not restricted to, all information about the impact on the elements and measures that might affect the environment 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 inbox, [uhdb.foi@nhs.net](mailto:uhdb.foi@nhs.net)

The statutory time limit for responses to requests for information under the Environmental Information Regulations is 20 working days, though this may be extended by a further 20 working days if the request is deemed to be complex or voluminous in nature.

### **16 Requests Relating to Potential Media Interest**

The Trust will not distort its process or compile a response to an FOI request differently if it is felt that the response will prompt media interest, though the Trusts Communications Team will be sighted on the response to be aware of the media interest in the topic.

### **17 Duty to Provide Advice and Assistance**

The Trust has a duty to provide advice and assistance to persons making FOI Requests in line with Section 16 of the FOI Act and the Section 45 Code of Practice. The Trust will endeavour to undertake all steps it deems to be reasonable to achieve this.

### **18 Identity of the Applicant and Reasons for the Request**

The FOI Act does not mandate that the identity of an applicant must be disregarded, though the ICO has advised that, as the Act enables disclosure of information on grounds of public interest, requests ought to be made applicant and motive blind when responses to requests are formulated

by organisations.

On this basis, the Trust will assess all requests on the understanding that applicant identity is not a relevant consideration during the lifecycle of the request management process.

Possible exceptions to this include, but are not limited to:

- A request is deemed to be repeated
- The applicant has made a request for their own personal data
- Aggregated costs in line with the Fees Regulations
- Release would be likely to endanger the health and safety of the requester or any other person
- Prejudice may be caused by releasing the information either to the requester or to any other person (prejudice based exemptions only)
- Situations where the Trust is confident that the identity of the applicant means the requested information is reasonably accessible to that person by other means, and is therefore exempt by way of Section 21 of the Act
- If disclosure of third party personal data would be contrary to Data Protection principles and/or regulations to release the information to the general public

## 19 Third parties

The Policy does not apply to independent third parties; however, third parties are expected to understand and accept that the Trust has an obligation to publish information under the FOIA. This means that contractors, despite what is written within their terms, have to accept that certain information is disclosable.

## 20 Exemptions and the Public Interest Test

The Trust will consistently encourage the release of recorded information to the public. Sometimes it is not appropriate or practicable for recorded information held by the Trust to be disclosed and there are 23 exemptions (**See Appendix A**) under the FOI Act which may be applied to withhold information from disclosure. There are two types of Exemption:

(a) Absolute - 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 FOIA. An absolute exemption does not require a test of prejudice, or balance of the public interest.

(b) Qualified - 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

The Public Interest Test is set out in section 2 of the FOI Act. It provides that, even where the information meets the requirements of a qualified exemption, the information may only be withheld where, *“in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”*.

A Public Interest Test requires the Trust to consider the competing public interest factors in disclosure and the maintenance of secrecy by weighing of competing information and circumstances. The Trust will conduct Public Interest Tests without bias, in line with guidance set by the ICO and with a view to release of the requested information unless a clear margin of

public interest in maintaining the exemption exists.

The strength of the factors both in favour of disclosure and maintaining the exemption will be assessed on a case-by-case basis.

Section 36 of the FOI Act enables information to be made exempt if its disclosure may inhibit the ability of an authority to conduct its business effectively. Reliance upon this exemption requires the approval of the Trusts Qualified Person, the Chief Executive.

## **21 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. Please also note that if an applicant sends five FOI requests each containing ten questions, in order to circumnavigate Section 12 of the FOIA, the Trust have the right to aggregate the requests and if applicable can issue a refusal notice under Section 12.

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)

## **22 Re-Use of Information**

Re-use of information relates to information the Trust has produced being re-published, or to produce a new resource.

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

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 the intended purpose.

The Trust should permit re-use in response to a request unless the content was exempt. The Trust must make the information available for re-use in the format in which it is held. Information should be made available in a machine readable format such as Microsoft Word and Excel.

## **23 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.

## **24 Publication Scheme**

The FOI Act makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner.

The Trust's publication scheme can be found online at <https://www.uhdb.nhs.uk>. The scheme is divided into 7 sections:

- Accessing information not included in our Publication Scheme
- Who we are and what we do
- What we spend and how we spend it
- Our priorities and how we're performing
- How we make decisions
- Services we offer
- Lists and registers

## **25 Disclosure log**

In addition to proactively updating its Publication Scheme, the Trust will maintain an online disclosure log that lists responses to requests made to us.

The Trust will not publish any requests from an applicant for information in relation to their personal data.

## APPENDIX A - EXEMPT INFORMATION UNDER PART 2 OF THE ACT

There are two types of class exemption identified within the Freedom of Information Act 2000:

- (a) Absolute - 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 FOIA. An absolute exemption does not require a test of prejudice, or balance of the public interest.
- (b) Qualified - 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

With the exception of section 21 (information available by other means) exemptions apply not only to the communication of information, but also to the duty to confirm or deny, if that itself would disclose information that is reasonable to withhold.

Absolute Exemptions:

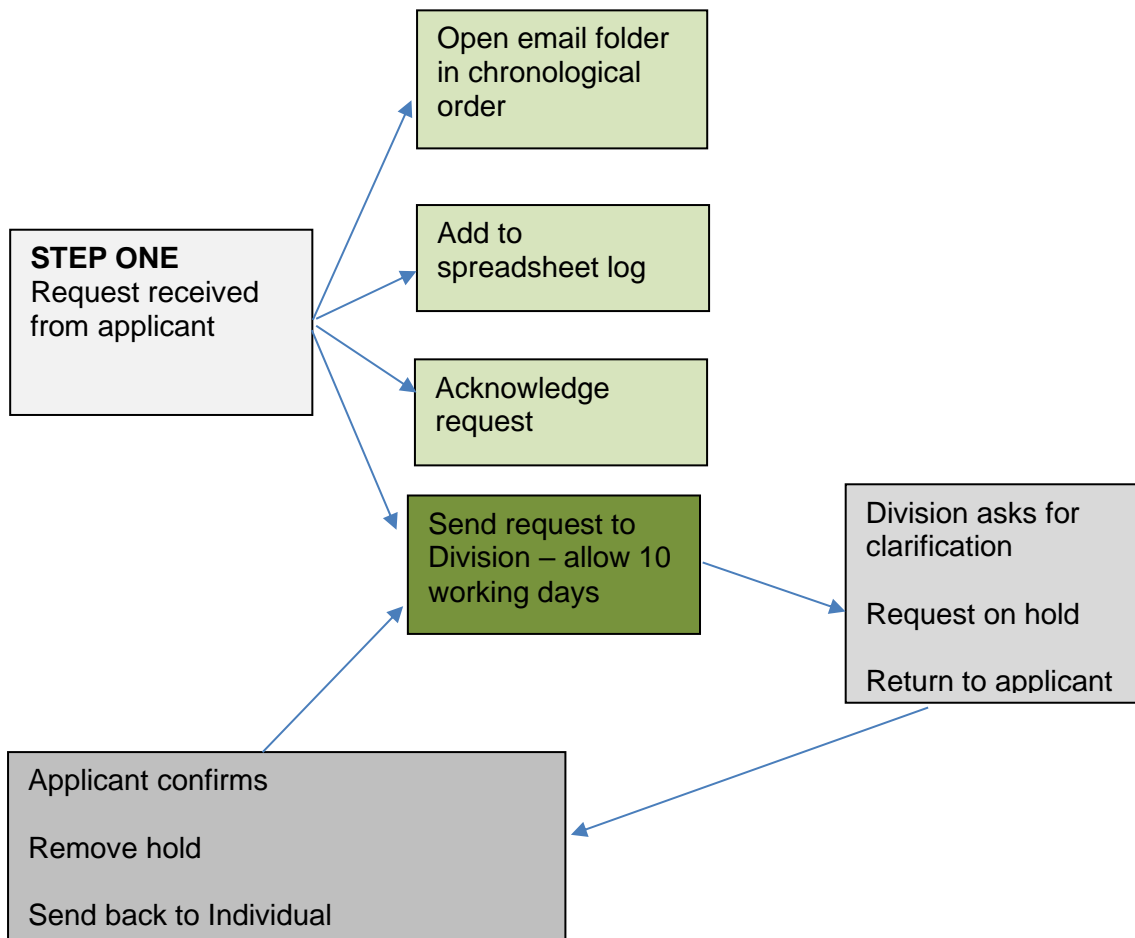
- **Section 21 - Information accessible to the applicant by other means** Information which is already in the public domain, such as that which is published in the Publication Scheme
- **Section 23 - Information supplied by, or relating to, bodies dealing with security matters** This applies only to information supplied by or relating to security bodies
- **Section 32 - Court Records** Information that is only held as part of the documentation for a court, tribunal case or a statutory inquiry
- **Section 34 - Parliamentary Privilege** Where disclosure would infringe the privileges of either House of Parliament
- **Section 40 - Personal Information** Information which is personal to the person making the request
- **Section 41 - Information provided in confidence** An 'actionable' breach of confidence where disclosure would constitute a breach of confidence which would lead to legal action being taken
- **Section 44 - Legal Prohibitions on Disclosure** Where disclosure of information is prohibited by any other law or regulation, or if it would be a contempt of court

Qualified Exemptions:

- **Section 22 - Information intended for future publication** Where publication was planned at the time the request was made, for example, an annual report, or the results of an investigation. Applicants will be advised when the information will be published and how it can be obtained.
- **Section 24 - National Security** Information that is not covered by Section 23 under the Absolute Exemption category above, but exemption is needed to safeguard national security. This requires a certificate signed by a Minister of the Crown.

- **Section 26 - Defence**  
Information likely to prejudice national defence or the activities or our armed forces, or those of allies
- **Section 27 - International Relations**  
Information likely to prejudice the United Kingdom's international relations or interests, for example, information obtained in confidence from another State or international court.
- **Section 28 - Relations within the United Kingdom**  
Information likely to prejudice relations between the United Kingdom Government, Wales, Scotland or Northern Ireland
- **Section 29 - The economy**  
Information likely to prejudice the economic interests of the United Kingdom or part of the United Kingdom, or the financial interests of the government
- **Section 30 - Investigations and proceedings conducted by public authorities**  
Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.
- **Section 31 - Law enforcement**  
Information not covered by Section 30 above, and which is likely to prejudice a wider range of investigative activities.
- **Section 33 - Audit**  
Applies to information held by public authorities which have functions relating to audit (for example, the National Audit Office), or which examine the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions.
- **Section 35 - Formulation of Government Policy**  
Information held by a government department or the National Assembly for Wales, relating to the creation of government policy.
- **Section 36 - Prejudice to the effective conduct of public affairs** Information that may inhibit the ability of the authority to conduct its business effectively should that information be made freely available in the public domain - Use of this exemption requires sign off from the Chief Executive in receipt of a recommendation to do so by a National Director.
- **Section 37 - Communication with Her Majesty etc. and honours**  
This applies to information that relates to communications with Her Majesty, members of the Royal family or Royal household, or the conferring of honours, for example, recommendations for individuals to receive an honour in the New Year's Honours List.
- **Section 38 - Health and Safety**  
Information that would, or would be likely to, endanger the physical health, mental health or safety of an individual.
- **Section 39 - Environmental Information**  
Exempted under Freedom of Information but the request will be dealt with in accordance with the Environmental Information Regulations.
- **Section 40 - Personal information about a third party**  
Information which is personal to the applicant or someone other than the person making the request
- **Section 42 - Legal Professional Privilege**  
This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings, for example advice provided by a lawyer to his client, or information relating to ongoing legal proceedings.
- **Section 43 - Commercial Interests**  
Such as trade secrets, and to information which if disclosed could harm/prejudice the commercial interests of any person, including the authority holding it.

**APPENDIX B - FOI Process Flowchart**



**STEP TWO**  
Chase Division at:  
10 days  
12 days  
15 days - escalation

**STEP THREE**  
Information received from Division

Compose draft/response from Divisional reply

Reply to applicant within 20 working days

**STEP FOUR**  
Close email folder  
Complete spreadsheet  
Upload response into the UHDB Website