

FREEDOM OF INFORMATION POLICY

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Change History

Version	Date	Author	Reason for change
			e.g. New Policy, Formal review, Informal review due to...
1	April 2007	David McNeil	Policy approved
2	June 2010	David McNeil and Nicola Bateman	Included sections on responsibilities, training, implementation, distribution, related policies, monitoring and compliance, reference, FOI procedure, 6.5 public interest test.
3	September 2012	Elizabeth Rippon	Changes to responsibilities.
4	February 2015	Jean Hickman	Change to new template. Change of responsibilities and other changes throughout document.
5	April 2019	Rosemary Carney and Louise Halfpenny	Periodic review due. Change of responsibilities. Change to number below which figures are redacted. Many sections have been updated. Added new definitions, internal review process, advice on requests for information to be submitted online, clarified information that is held including reference to the Trust's contractors.

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1 Aim

The policy sets how the Trust will comply with the requirements of the Freedom of Information Act 2000 (FOIA) and the [Code of Practice](#) issued by the Information Commissioner.

2 Objectives

The FOIA requires public authorities to provide information they hold to anyone who requests it within 20 working days, unless that information is exempt from disclosure under the conditions set out in the FOIA. This policy aims to:

- Ensure all requests for recorded information are dealt with consistently and processed and in accordance with relevant legislation and guidance
- Ensure responses are supplied within the time legally required
- Provide guidance on the correct way to handle information
- Advise staff of their responsibilities under the FOIA and the Codes of Practice issued by the Cabinet Office (the Code).
- Ensure the Trust's Publication Scheme includes appropriate information that is current and readily available to the public and staff.
- Set out how the Trust will monitor compliance and assure the Board that the Trust complies with the requirements and the spirit of the FOIA.

3 Definitions

3.1 Information Commissioner

The Information Commissioner is the regulator for data protection and upholds information rights in the public interest. The Information Commissioner's Office (ICO) has the power to:

- Issue Practice Recommendations to the Trust
- Issue Enforcement Notices should Practice Recommendations be ignored
- Apply for warrants for entry and inspection
- Institute a prosecution against the Trust or an individual which could result in fines and/or imprisonment.

3.2 Information held by Trust

Requested information must be recorded, and could be recorded in any medium (electronic, paper, email, notes). Information may be held by a contractor, the Code (S45) says public services contracted out to the private sector must be "delivered in a transparent way".

3.3 Publication Scheme

Section 19 of the FOIA requires all public authorities to adopt and maintain a publication scheme. The scheme must ensure certain classes of information are routinely available, such as policies, procedures, minutes of meetings, annual reports and financial information, it should cover:

- Who we are and what we do
- What we spend and how we spend it
- What are our priorities and how are we doing
- How we make decisions

- Our policies and procedures
- Lists and registers
- The services we offer

3.4 Duty to Assist

Section 16 of the FOIA requires the Trust to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

This can include clarifying unclear requests, providing information in a specific form, advice on how to narrow responses which exceed the cost limit, or if the information is not provided to direct the requester to the location of the information if already accessible, or to another public authority which can provide it.

3.5 Exemptions

The expectation is that the Trust discloses information that is requested, unless exempt. The FOIA sets out specific exemptions, which are either absolute or qualified. An 'absolute exemption' [if properly applied] cannot be challenged, but most exemptions are qualified' and require a 'public interest' test.

3.6 Public Interest Test

When applying a qualified exemption the Trust must be able to demonstrate it has considered the relative weight of the arguments for and against disclosure. This can be affected by the likelihood and severity of any prejudice; the age of the information; how far the requested information will help public understanding; and whether similar information is already in the public domain.

3.7 Cost Limit

Requests can be refused if the Trust considers the cost of providing the information is excessive. This is set out in the FOIA as 18 hours work which is assumed to be costed at £25 per person per hour equal to £450.

3.8 Personal Data

There is an absolute exemption for personal data if releasing it would be contrary to the General Data Protection Regulation (the GDPR) or the Data Protection Act 2018 (the DPA 2018) and such requests will be referred to the relevant teams.

3.9 Datasets

A dataset is a collection of factual information in electronic form to do with the services and functions of the authority that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

3.10 Section 36

The exemption applies to information if complying with the request would prejudice or would be likely to prejudice "the effective conduct of public affairs". This includes, but is not limited to, situations where disclosure would inhibit free and frank advice and discussion. The judgement about prejudice must be made by the legally authorised 'Qualified Person' for that public authority.

3.11 Qualified Person

For NHS authorities the 'Qualified Person' is the Chief Executive. The qualified person's opinion must be a 'reasonable' opinion, and the Information Commissioner can decide whether the section 36 exemption has been properly applied and if a complaint is made, will expect to see evidence of the qualified person's opinion and how it was reached.

4 Scope

- 4.1 The policy and the FOI protocol (attached as appendix 1) applies to all staff working in the Trust. In this policy 'staff' includes learners, contract and voluntary staff. All members of staff are required to adhere to the principles involved as outlined within this document together with any related procedures, which are enabled by this policy.
- 4.2 The policy is particularly relevant to staff who record or hold information, whether on paper or electronically, who must ensure that:
- information is created and stored in accordance with Trust procedures and processes to enable easy location when required
 - information requested by the FOI team is correct and sent in a timely manner in accordance with the Trust's FOI procedure and the FOIA.
- 4.3 The policy does not apply to medical records or information about the requester; these types of request are dealt with by the Patient Access Team.

5 Responsibilities

5.1 Chief Executive

The Chief Executive has ultimate responsibility for adherence to the FOIA and is the 'qualified person' (see definitions).

5.2 Director of Communications

The Director of Communications is the Executive Lead for this policy.

5.3 Clinical/Executive Directors

Divisional and Executive Directors are responsible for nominating a Freedom of Information (FOI) Lead for their area, who will direct queries to appropriate staff and ensure response are sent within the required time limits.

Directors (or their nominated deputy) are responsible for the final approval of letters to ensure responses are accurate.

Directors (or their nominated deputy) are responsible for ensuring that any policies which form part of the Publication Scheme are updated at the appropriate time and uploaded to the website.

5.4 FOI Leads

FOI Leads are responsible for:

- Receiving and acknowledging FOI requests sent by the FOI team, and immediately notifying them if the information is not held by their department.
- Contacting the FOI Team immediately if clarification of an FOI request is required or where advice and assistance is required with responding to a request.
- Sourcing the information requested from the relevant individual/s within their department /service/directorate.
- Ensuring that the information from their area is returned to the FOI team in a timely manner i.e. within 10 working days of receipt of the FOI request.
- Escalating any issues with obtaining information for an FOI request to the relevant senior manager/director.
- Working collaboratively with the FOI Team to ensure the accuracy of their department's/division's information within the publication scheme.

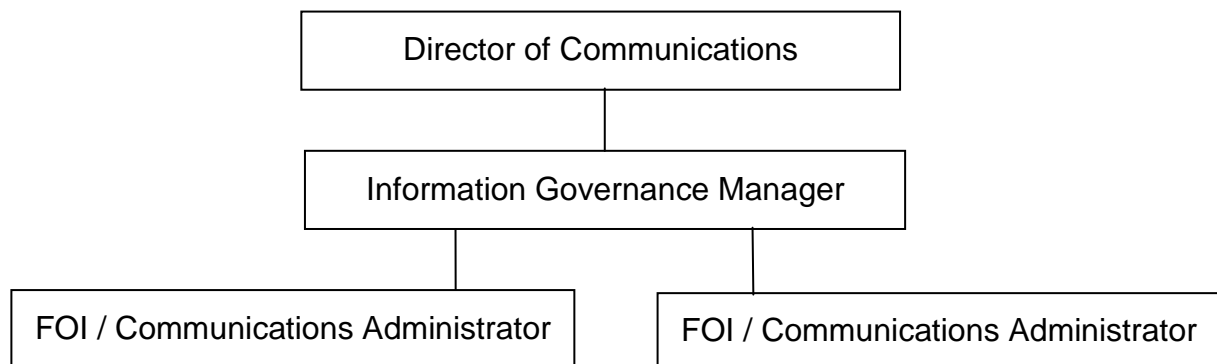
5.5 The Freedom of Information Manager

The Freedom of Information Manager and Freedom of Information Administrators are responsible for the central management of requests, identifying the area covered by the request and contacting the relevant FOI Lead, advising on the use of the exemptions, providing FOI advice and assistance, and for reviewing the Publication Scheme on a regular basis.

The FOI Manager is responsible for providing FOI performance reports to the Patient Safety and Compliance Committee, to:

- report on FOI issues within the Trust
- identify the necessary actions to ensure that the Trust is compliant with the FOIA
- lead in setting up, implementing and maintaining freedom of information systems;
- resolve the day-to-day FOI queries which arise
- provide quarterly statistics to the Patient Safety and Compliance Committee on compliance in meeting all FOI requests within 20 days.

The Freedom of Information Team



5.6 All Managers

All managers are responsible for ensuring that this policy is communicated and implemented within their area of responsibility. Any advice or assistance regarding this policy or the FOIA can be obtained from the FOI team.

5.7 All Staff

All employees of the Trust, and all learners, are obliged to adhere to this policy. They must also ensure they are aware of the implications of the policy, and the process for handling FOI requests, including the need to send any FOI requests received by them to FOI team immediately, for a central response.

6 Procedure

- 6.1 Please see attachment 1 which sets out the detailed procedure used to ensure the Trust complies with the FOIA and responds to all requests within the required 20 day time frame.
- 6.2 Requests for information must be received in writing, must state the applicant's name and include an address for correspondence which can be an email address, and clearly describe the information being requested.
- 6.3 Responses will be sent in the format requested. Information will not be supplied by entering it online (eg SurveyMonkey). The Trust would not have a record of the information returned, the information could not be approved by the relevant director and there are potential risks for cyber security.
- 6.4 The names of staff are their personal information in line with the Data Protection Act (1998) and qualified exemption 40 (2)(b)(i) of the Freedom of Information Act 2000. Staff should be contacted through department contact details which are publically available. The trust will only disclose the names of very senior managers and staff in a public-facing role who are Band 8 or above.

Unless contact details have been made publicly available, they can be withheld if there is a likelihood of possible disruption that could be caused from staff being emailed and telephoned directly as opposed to going through normal contact channels such as switch boards.

- 6.5 In the interests of protecting patients, the Trust will not release any information which it feels could identify individuals and constitute a breach of the Data Protection Act (1998)] of the Freedom of Information Act (2000).

This includes incidences in which the data requested is of a sufficiently small numbers that it could be used to identify patients, i.e. patient numbers under five. However, this does not constitute an exemption under the FOIA and each case must be assessed on its merits for the risk of disclosing patient identifiable data.

- 6.6 The requested information will be forwarded to the relevant FOI Leads who will supply it within the required time limit. The FOI team will collate the information and prepare a draft response. The response will be checked for accuracy by the relevant director who will approve the final response before it is sent out by the FOI team.

6.7 Internal Review

- 6.71 Under section 17(7) of the Act, the Trust is required to inform requesters whether there is an internal review process and, if there is, to set out the procedures including details of how applicants request an internal review. The

Trust should also inform the applicant of their right to complain to the Information Commissioner under section 50 if they are still dissatisfied following the outcome of the internal review.

6.72 The Trust is not obliged to accept internal reviews later than 40 days after the response was sent. Requests for an internal review requests should be made in writing.

6.73 Requests for internal review should be acknowledged and the applicant informed of the target date for responding. There is no legal requirement on the time to respond but this should normally be within 20 working days of receipt. If the issue is complex, requesters should be advised if it is anticipated that the Trust will require more time to review its response.

6.74 The review will reconsider the concerns raised by the requester. The information gathered will be reviewed by the Director of Communications who will respond to the request providing the outcome of the review.

6.8 Re-use of information

The [Re-Use of Public Sector Information Regulations 2015](#) set out the conditions for the re-use of public sector information for a purpose other than the one for which the information was originally created.

Subject to requests meeting the necessary criteria, the Trust will authorise the re-use of all information it holds, unless:

- the copyright and/or other intellectual property rights are owned or controlled by a person or organisation other than the Trust
- information supplied under the Freedom of Information Act is subject to the Trust copyright unless otherwise indicated. It may be reproduced free of charge in any format or medium, unless expressly indicated to the contrary, provided:
 - It is reproduced accurately and not used in a misleading manner
 - the source is identified and the Trust's copyright is acknowledged
 - It is not used for the principal purpose of advertising or promoting a particular product or service
 - this permission does not extend to any material which is the copyright of third parties.
 - the information is the subject of an exclusive arrangement

6.9 Retention

The Trust follows the retention schedule produced by the Department of Health, Records Management NHS Code of Practice. It states that FOI requests should be held for:

- 3 years after full disclosure
- 6 years if information requested was not disclosed.

7 Evaluation measures

Monitoring- Audit & Review

Monitoring & Compliance

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements
Scheme of Publication	FOI Manager Assurance Team / PGRG	PGRG will inform systems development when updated policies have been approved and need to be uploaded to the website.	Quarterly	
Compliance against 20 day response requirement	FOI Manager	Excel sheet	Quarterly	Safety and Compliance Meeting
Requirement to return information to FOI team within 10 days	Directors Directorate FOI Leads	Monitoring TBA by directorate	Weekly	FOI Lead to advise Director

8 Review

This policy will be reviewed by the Director of Communications every three years.

9 Safeguarding

This policy does not impact on safeguarding but the Trust may be asked about policies, procedures and performance information in regard to safeguarding.

10 Service User Involvement

This policy applies to information held including personal information under but the FOIA this must be considered with regard to GDPR and the Data Protection Act.

This policy applies to all information held by the Trust including that sent by third parties, including contractors, other trusts and regulators.

11 Equality Impact Assessment Statement

In meeting the Trust's responsibilities for equal opportunities, we have reviewed this policy against the practice of unfair and unlawful discrimination and found it to be fair and unbiased.

12 References

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See below.

13 Related Policies

- Corporate Records Management Policy
- Information Governance Policy and Strategy
- Data Protection and Confidentiality Policy
- Information Sharing Policy
- Access to Health Records
- Records Retention and Disposal Policy
- Records Retention and Disposal Schedules
- Policies included in the Scheme of Publication
- Department of Health Guidance 'Records Management: NHS Code of Practice
- General Data Protection Act

14 Equality Impact Assessment

		Yes/No	Comments
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 including lesbian, gay and bisexual people	No	
	Age	No	
	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
	Marriage & Civil Partnership	No	
	Pregnancy & maternity	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	
4.	Is the impact of the policy/guidance likely to be negative?	No	
5.	If so can the impact be avoided?	N/A	
6.	What alternatives are there to achieving the policy/guidance without the impact?	N/A	
7.	Can we reduce the impact by taking different action?	N/A	

If you have identified a potential discriminatory impact of this procedural document, please refer it to (Insert name and position) together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact (Insert name and position).

Appendix 1

Freedom of Information Protocol

The Freedom of Information Act 2000 (FOIA) provides the public with a general right to access information including policies. The FOIA puts a legal obligation on public authorities to confirm whether the information exists and to provide it any reasonable format requested within 20 days.

The FOIA promotes a spirit of openness and information should be disclosed unless it is exempt under the conditions set out in the FOIA. There are two types of exemption: one is absolute so no disclosure is required, the other is a qualified exemption which means the decision not to disclose the information must be weighed against the public interest.

This protocol, and the Trust's FOI policy, set how to comply with the requirements of the FOIA and the Code of Practice issued by the Chief Information Commissioner to ensure:

- all requests for recorded information are dealt with consistently
- responses are supplied within the legal time limit of 20 days
- Freedom of Information requests (FOIs) are dealt with correctly by all staff

Receiving FOI requests

To be valid, an FOI must be made in writing and give the requester's name and address, this may be an email address, and ask for information that is 'held' by the Trust.

Other information

If the request is for personal data (patient records or information for legal action) this should be forwarded to the Access to Health Records team: accesstohealthrecords@whht.nhs.uk.

This will be processed under the relevant legislation for personal data.

Key terms

- Information held by Trust

The requested information must be recorded, and could be recorded in any medium (electronic, paper, email, notes). Information may be held by a contractor, the Code (S45) says public services contracted out to the private sector must be "delivered in a transparent way".

The FOIA does not require the Trust to create information in response to a request, to respond to hypothetical scenarios or provide opinion.

- Publication Scheme

The Trust is not required to provide information that is already available to the public. The Trust is required to maintain a 'Publication Scheme' which includes key information such as policies, procedures, minutes of meetings, annual reports and financial information, are readily available to the public.

- Duty to Assist

The FOIA requires the Trust to provide advice and assistance. This can include clarifying requests, providing information in a specific formation, advising how to narrow responses which exceed the cost limit, or if the information is not provided to direct the requester to the location of the

information both on the Trust's website and to other organisations that might be able to provide the information.

- Exemptions

The expectation is that the Trust discloses information that is requested. The FOIA sets out specific exemptions, which are either absolute or qualified. An 'absolute exemption' [if properly applied] cannot be challenged, but most exemptions are qualified' and require a 'public interest' test.

- Public Interest Test

When applying a qualified exemption the Trust must be able to demonstrate it has considered the relative weight of the arguments for and against disclosure, if it is demonstrated that the information would benefit the public's interest, this may be an argument for disclosing information that would otherwise be confidential.

Timescales

The Trust has a legal obligation to respond to FOI requests within 20 days. Requesters can complain to the office of the Chief Information Commissioner if this deadline is breached. Therefore, there strict time limits are part of this process to ensure the Trust does not breach this requirement.

- Responders to FOI requests are expected to confirm within two days whether they are the correct person to supply the requested information.
- The FOI lead must return the requested information within 10 working days.
- The FOI team will monitor compliance and remind FOI leads when targets are not met.

Processing FOIs

FOIs are received by email. Emails are sent to either: FOI@whht.nhs.uk or forwarded from other trust email addresses, such as communications@whht.nhs.uk.

FOIs requests are logged on an Excel spreadsheet: 'Disclosure Log'. Each new FOI should be given the next available FOI reference number on the sheet. Use this FOI reference in the title of every email and all correspondence relating to the request.

Information to be logged

- The date on which it was received in the trust, regardless of the department to which it was sent, should be logged as date received.
- Name – the requester must give their name, this may not be the same as the email address.
- The type of organisation (check the bottom of the email, not just the email address):
 - Company means all commercial enquiries
 - Media all enquiries from journalists, pressure groups and 'companies, eg BBC
 - NHS all NHS queries
 - Organisation queries for information which is not commercial, clinical, performance, etc
 - Private all individuals
 - MPs usually on behalf of constituents
- Theme – information type
- Information requested - brief summary of the request, include key terms.

Acknowledge the request

- Send an acknowledgement email to the requester
- Create a folder in the FOI Inbox with the FOI reference number, move both the received and sent items to the folder

NB Emails sent from 'FOI' do not appear in FOI account sent items folder, they sit in the Sent items fold of the person who sent the email.

- Create a folder in the G drive and save the acknowledgement email in the folder.

NB In time, the email folder will be deleted, so it is important that key stages are saved in the G drive. These will be saved for the required period set out in the Retention Policy.

Obtaining the requested information

- Consult the contacts list for to find the nominated FOI lead for the department that holds the information. If more than one department, send to all FOI leads simultaneously.
- Do not send the requester's details, their details are personal information and irrelevant to any response that is sent.
- Complete the spreadsheet with the relevant FOI leads and the date it was sent to them.
- It is not always clear who should respond, FOI leads must respond within two days to confirm whether or not they will be obtaining the requested information.
- If the request has come from a media organisation, copy the email to the Director of Communications.

Time limit

The FOIA recognises that requests can be burdensome and divert staff from their prime responsibilities. The Trust will apply Exemption 12 if responders calculate that the total time required to respond to the request would exceed the 18-hour time limit.

Costs

Section 13 of the FOIA says a public authority may charge for certain costs, Regulation 7 of the Fees Regulations allows a public authority that chooses to answer a request which exceeds the appropriate time limit to charge for the total sum of:

- the communication costs (including the costs of communicating whether or not the information is held even if it is not to be provided); and
- staff time spent on communicating the information.

If the Trust decides to provide information a fees notice should be issued and the FOI team will provide guidance on which items can be included in the calculation of costs.

Collating the requested information

- FOI leads are responsible for returning the information within 10 days of the request and checking it for accuracy. The information should be clear and recognise that the FOI team or the requester may not be familiar with the subject matter.
- FOI leads must inform the FOI team if they consider the information should not be disclosed.
- If an exemption is to be applied, the FOI team will check the exemptions to ensure the response refers to the correct exemption and the reason complies with the terms set out in the Act for not disclosing the requested information, including a public interest test when relevant.

Executive Director Approval

- The draft response will be sent to the appropriate executive director. The executive director is responsible for confirming the accuracy of the content and that the nature of any information that has not been disclosed complies with the exemption that has been applied.
- Record on the spreadsheet to which executive director it was sent, and the dates on which it was sent and returned.
- Once the final response has been approved, it should be saved in the G drive together with the director's email confirming approval.

Media

All enquiries from media should also be approved by the Director of Communications.

Responding

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- Responses should be sent in the format requested wherever possible, and unless requested in another format, the final letter and any attachments should be sent as a pdf.
- Save the sent item with the requested information in the G drive.
- Update the spreadsheet.

FOI Folder

Once the request has been sent the FOI folder on the G drive should include:

- Acknowledgement email to requester
- Draft response
- Approval email from executive director/senior manager
- Revised response if amended
- Final version of response, Word and pdf
- Final email to requester

Processing FOIs received by post

- Check the letter has a date received stamp, if that was by another department add the date it was received by the FOI team
- Scan the letter, save it in the G drive
- Follow the stages above
- Post an acknowledgement letter to the requester
- Send the final response by post.