

Freedom of Information policy

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Contribution List

Key individuals involved in developing this version of the document

Name	Designation
Rosemary Carney	Communications Projects Manager
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Change of History

Version	Date	Author	Reason for change
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.
6	March 2024	Rosemary Carney, Freedom of Information Manager	Periodic review due.

Abbreviations and Acronyms

Abbreviations and Acronyms	Description
MDT	Multidisciplinary Team
PGRG	Policy & Guideline Review Group
QSG	Quality & Safety Group

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1. Introduction

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 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 if Practice Recommendations are 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, recordings and photographs). 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 Chief Strategy & Collaboration Officer

The Chief Strategy & Collaboration Officer is the Executive Lead for this policy.

5.3 Clinical/Executive Directors

Divisional Directors and Chief Officers (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.

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

Executive 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.

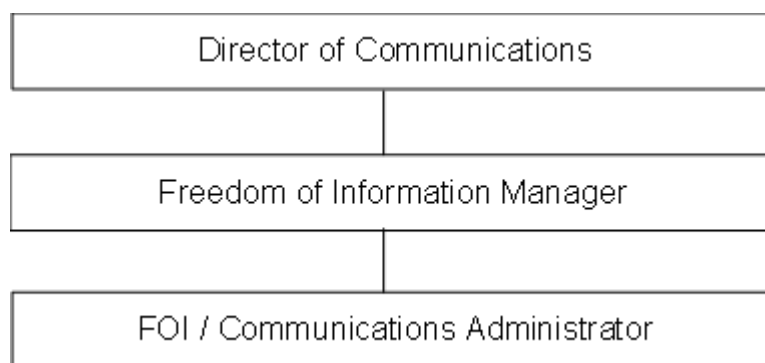
5.5 The Freedom of Information Manager

The Freedom of Information Manager and Freedom of Information Administrator 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 Informatics Group 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 publicly 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:

- three years after full disclosure
- six years if information requested was not disclosed.

7. Monitoring & Compliance

1	Following local and national policies and guidelines, what key elements require monitoring?	List elements to be monitored	a. Compliance with 20-day response target.
2	Who will lead/be accountable for monitoring?	Lead title and/or MDT	Director of Communications
3	Describe how the key elements will be monitored?	List tools to evidence compliance	a. FOI Manager
4	How frequently will each element be monitored?	List frequency of monitoring for each element	a. Quarterly report
5	Explain the protocols for escalation in the event of problems?	List the processes of escalation	a. FOI teams monitors continually.
6	Which Committee/ Panel/ Group will reports go to?	List the Committee/Panel/ Group/Peer Review that the reports will go to	a. Approaches to more senior staff
7	Explain how the policy/guideline will be disseminated within the Trust?	List ways identifying how this document will be shared and how it will be recorded that appropriate staff have been made aware of the document and where to find it	a. Informatics Group

8. Safeguarding

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

9. Patient & Carer 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.

10. References

See below

11. Related Policies and Guidelines

- ***General Data Protection Regulation***
- ***Access to Health Records Disclosure Policy***
- ***Data Protection Act 2018***
- ***Corporate Records Management Policy***
- ***Information Governance Policy and Strategy***
- ***Data Protection and Confidentiality Policy***
- ***Information Sharing Policy***
- ***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***

12. Equality Impact Statement (EIA)

What is an equality impact assessment?

There are many benefits in conducting an equality impact assessment (EIA) prior to making business decisions about policies, clinical guidelines or any other work that may potentially impact on a wide range of people with protected characteristics. Equality impact assessments should not be seen as an afterthought once decisions have already been made.

Benefits:

- Improved capacity to consider equality, diversity and inclusion as part of business management
- Reduced costs as a result of not having to revisit a policy/project
- Take into account a diverse range of views and needs
- Enhanced reputation as a Trust that is seen to understand and respond positively and proactively to diversity.

Whatever approach you take to an equality impact assessment, case law has established that you should keep an accurate, dated, written record of the steps you have taken to analyse the impact on equality. This will help you to check whether you are complying with the duty and it will be useful if your decisions are challenged.

When completing an equality impact assessment you should consider:

- Treating a person worse than someone else because of a protected characteristic (known as direct discrimination)
- Putting in place a rule or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified (known as indirect discrimination)
- Treating a disabled person unfavourably because of something connected with their disability when this cannot be justified (known as discrimination arising from disability)
- Failing to make reasonable adjustments for disabled people.

Equality impact assessment process

Stage 1 (Screening)

This stage provides an opportunity to explore whether the policy decision may have a negative, neutral or positive impact on different groups of people.

- If yes, use the 'comments' column to describe what this impact could be.
- If no, outline how have you arrived at this conclusion.
- If unsure use the 'comments' column to describe what you need to do to find out.

Stage 2 (Full Assessment)

This should be carried out in compliance with policy HR028 Equality & Human Rights Policy.

Does this policy/guideline affect one group less or more favourably than another on the basis of:			
			Comments
1	Age (younger people & children & older people)		no
2	Gender (men & women)		no
3	Race (include gypsies and travellers)		no
4	Disability (LD, hearing/visual impairment, physical disability, mental illness)		no
5	Religion/Belief		no
6	Sexual Orientation (Gay, Lesbian, Bisexual)		no
7	Gender Re-assignment		no
8	Marriage & Civil Partnership		no
9	Pregnancy & Maternity		no
	Is there any evidence that some groups maybe affected differently?		no
	Could this document have an impact on other groups not covered by a protected characteristic? (e.g.: low wage earners or carers)		no
If ' NO IMPACT ' is identified for any of the above protected characteristics then no further action is required.			
If ' YES IMPACT ' is identified a full impact assessment should be carried out in compliance with HR028 Equality & Human Rights Policy and linked to this document			

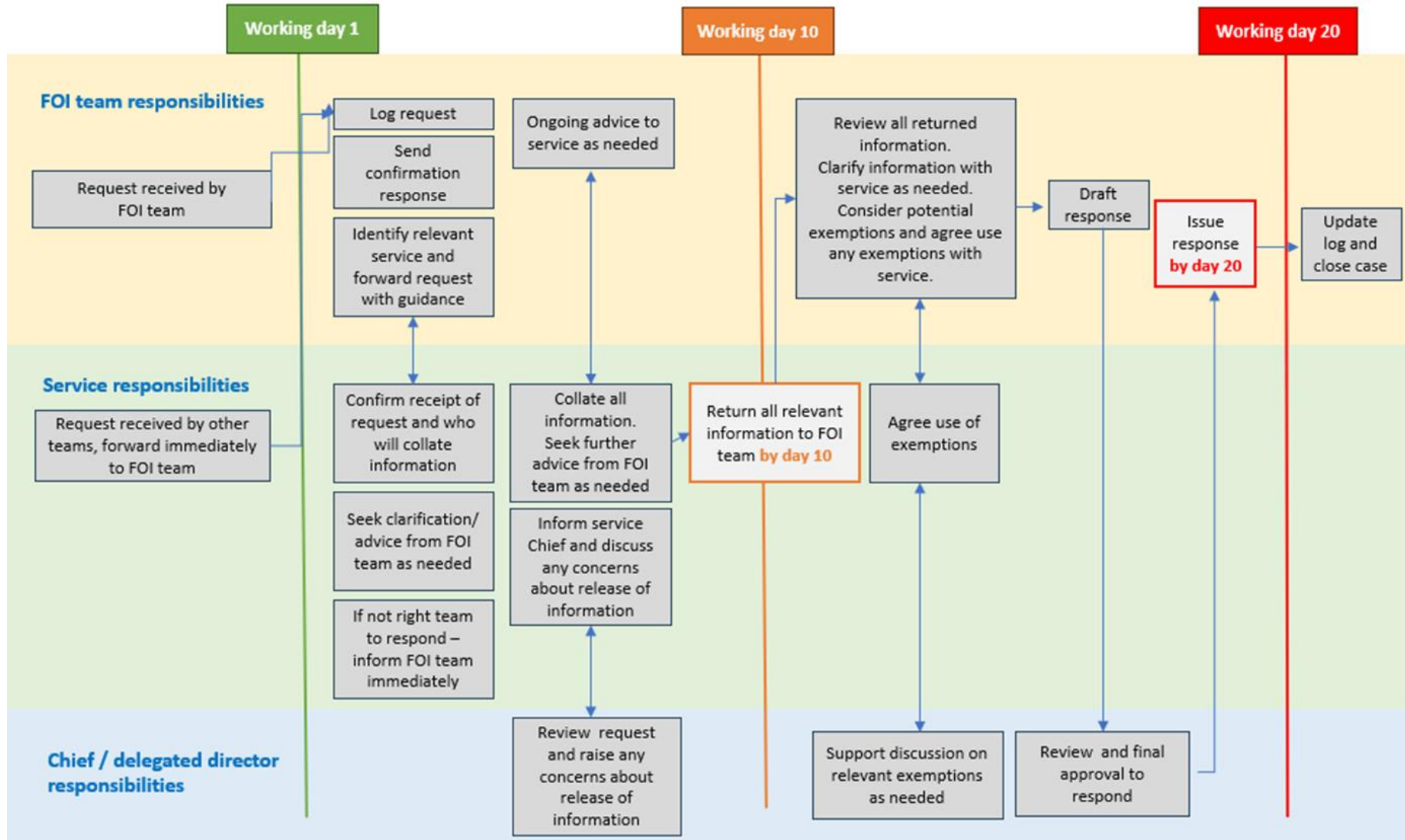
Any other comments:
<i>Please use this box to add any additional comments relevant to the assessment</i>

Assessment completed by:	Rosemary Carney, Freedom of Information Manager	Date completed:	23/04/2024
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If you have any queries or concerns about completing the EIA form, contact the Trust's Inclusion & Diversity Team at WestHerts.Inclusion@nhs.net

Appendix 1

Freedom of Information requests process and responsibilities



Freedom of Information – final approval of responses

