



FREEDOM OF INFORMATION POLICY AND PROCEDURE

Primary Intranet Location	Version Number	Next Review Year	Next Review Month
Legal Services	V5	2021	July

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Date	24 May 2018
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It is the responsibility of the staff member accessing this document to ensure that they are always reading the most up to date version - this will always be the version on the intranet

Related Policies and Procedures	Access to Health Records Policy Information Governance Policy Openness and Candour Policy
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Stakeholders	Legal Services Information Governance Committee Caldicott Guardian Board of Directors
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Version	Date	Author	Author's Job Title	Changes
V1	Mar 2011	Karl Perryman	Head of Legal Services	Initial development
V2	Oct 2012	Karl Perryman	Head of Legal Services	Complete review incorporating new internal procedures
V3	Nov 2014	Claire Roberts	Associate Director of Patient Experience	Review in line with new template and current guidance
V4	Jan 2016	Martin Heywood	Legal Services Manager	Update and improved procedure
V4.1	Jan 2018	Martin Heywood	Legal Services Manager	End date of January 2018 extended by 6 months at IG Committee because of changes coming in under the GDPR in spring 2018.
V5	May 2018	Martin Heywood	Legal Services Manager	Post DPA 2018 review – minor changes only

Summary of the Policy
A document that describes the procedure for the handling of Freedom of Information Requests received by the Trust under the Freedom of Information Act 2000

Key words to assist the search engine
Information, FOI, Request, Responder

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FREEDOM OF INFORMATION POLICY AND PROCEDURE

1 INTRODUCTION

1.1 The right for members of the public or organisations to seek information from public bodies is enshrined in the **Freedom of Information Act 2000** (the Act). The Act does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities

The provisions of the Act are enforced by the office of the Information Commissioner.

1.2 The Freedom of Information (FOI) Act applies to any recorded information held by or on behalf of a public body and this includes paper records, emails, information stored on computer, audio or video cassettes, microfiche, maps, photographs, handwritten notes or any other form of recorded information.

1.3 The age of the information is irrelevant and the rights apply to information recorded at any time, including information obtained before the Act came into force.

1.4 Requests for information must be in writing but can be submitted by letter, email or fax.

1.5 The NHS Commissioning Board, in its general conditions of contract, lays down requirements on how the organisation should respond to FOI requests related to its contract with Commissioners, specifying that the request should first be discussed with the Commissioner and a copy provided to the Commissioner within two working days.

1.6 The Act recognises that there are costs associated with providing information and under section 12 of the Act if it is estimated that it will cost more than £450 (18 hours work) to process the request, the request can be refused. The estimation must be based on the costs of determining whether the Trust holds the information, finding that information, retrieving it and extracting it.

2 PURPOSE

2.1 This policy and procedure outlines the responsibilities and processes in place to respond to FOI requests received by the Trust in accordance with the requirements

of the Act.

3 DEFINITIONS

3.1 Freedom of Information

- 3.1.1 The main principle behind FOI legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. This is sometimes described as a presumption or assumption in favour of disclosure.

4 RESPONSIBILITIES

4.1 Board of Directors

- 4.1.1 The Board of Directors have a responsibility to ensure that the Trust has in place the appropriate arrangements to ensure that the organisation is able to respond to all requests for information under the Act.

4.2 Medical Director

- 4.2.1 The Medical Director has delegated executive responsibility for ensuring compliance with the requirements of the Act.

4.3 Legal Services Manager

- 4.3.1 The Legal Services Manager and Solicitor has delegated operational responsibility to ensure that the organisation's processes are in place and fully compliant with the requirements of the Act, associated statutory instruments, Department of Health guidance; and has managerial responsibility for the day to day management of all FOI requests in accordance with the Act and this policy. Specifically, the Legal Services Manager will scrutinize all requests received and examine the scope, validity and appropriateness of each. In addition the Legal Services Manager will provide legal advice as appropriate to staff within the Trust who may be required to obtain the information required to meet the FOI request.

- 4.3.2 The Legal Services Manager will also decide as to whether senior manager or Executive Director involvement is required in relation to any request before the release of data that has novel, repercussive, political or newsworthy ramifications; and whether persons related to the subject matter of FOI requests need to be informed prior to release of any information.

4.4 Legal Services Support Officer

4.4.1 The Legal Services Support Officer is responsible for the day-to-day administration of requests and will liaise daily with the Legal Services Manager regarding all received FOI requests and all replies due to go back out to requesters.

4.5 **All Staff**

4.5.1 All staff have a responsibility to provide information to the Legal Services Support Officer or the Legal Services Manager when requested. The Act places an obligation upon the Trust to comply with requests within a 20 working day timescale and is a statutory immovable deadline.

4.6 **Information Governance Committee**

4.6.1 The Information Governance Committee is the overview committee for FOI requests and will ensure that these are managed in accordance with the Act and this policy.

5 **EXEMPTIONS**

5.1 There are exemptions under the Act in which the Trust is not required to provide information. These include the following:

- The cost of finding and extracting the information would be more than the cost limit set out in paragraph 1.6 above.
- The Trust has already provided the person with the same or substantially similar information, in which case the person may have to wait a 'reasonable' time before they can apply again.
- The request is considered 'vexatious' - for example, if it is made in order to disrupt the Trust's work or is part of an obsessive pattern of requests.
- The information is covered by an exemption which is not subject to the Act's public interest test. These are known as 'absolute' exemptions.
- The information is covered by an exemption to which the public interest test does apply but in this case the public interest in withholding the information is greater than the public interest in its disclosure.
- Where responding to an FOI request may be in breach of Data Protection Act principles.

5.2 Whether a request is covered by an exemption will initially be determined by the Legal Services Manager. All refusals are communicated in writing to the requester.

5.3 Members of the public have the right to appeal to the Information Commissioner if they consider that the Trust's decision on information being exempt is wrong.

6 **PROCEDURE FOR HANDLING FREEDOM OF INFORMATION REQUESTS**

6.1 All requests submitted to the Trust under the auspices of the Act should be forwarded immediately to the Legal Services Department.

- 6.2 The FOI request will be entered onto the 'Request for Information' Module on the Trust's Datix Database and individually referenced.
- 6.3 At the beginning of each day a meeting will be held between the Legal Services Manager and the Legal Services Support Officer so that all new FOI requests received can be considered and a plan of action decided upon in accordance with the terms of this Policy.
- 6.4 The Legal Services Manager will identify whether or not the Trust holds the information requested and will also confirm whether the request is subject to an 'Exemption' as defined by the Act. If the information is held and the request is not subject to any exclusion, the Legal Services Manager will determine with the Legal Services Support Officer the most appropriate person or department within the organisation to respond to the request and Executive Director over-viewer.
- 6.5 The Legal Services Department will send a letter to the FOI requester acknowledging that the Trust holds the information requested and inform them that the information will be sent within the statutory time-frame of 20 working days.
- 6.6 The Legal Services Department will then pass a copy of the FOI request to the appropriate person identified in paragraph 6.4 above - the nominated responder(s) - together with the timescale in which the response is required.
- 6.7 The Legal Services Department will track the progress of the request and send a reminder to the nominated responder(s) if a response has not been received after ten working days, with a copy to the Communications Team and/or the Executive Director(s) as appropriate.
- 6.8 The information requested of the nominated responder(s) must be returned to the Legal Services Department within 15 working days of the initial request. During the meeting referred to in paragraph 6.3 above, any information returned to the Legal Services Support Officer as ready for sending out is examined by the Legal Services Manager to ensure it meets the terms of the original FOI request and whether any further action in accordance with paragraph 4.3.2 of this policy is required before final despatch.
- 6.9 The Legal Services Department will ensure, as far as reasonably practicable, that FOI responses are despatched within the 20 working day deadline as stipulated by the Act. The Communications Team will also be copied in on the final response.

7 ROUND ROBIN FOI REQUESTS

- 7.1 On frequent occasions, FOI requests will be received that have also been sent to very large numbers of NHS or other public organisations all at the same time by email, because of the relative ease of doing so. Each recipient organisation must nonetheless comply with the request in accordance with the Act and their own internal policies. Any such requests received by this Trust will be considered by the

Legal Services Manager in the first instance in accordance with this policy, but reference may also be made to The East of England FOI Forum. The Trust is a member of this group and may receive FOI advice from the East of England Local Area Team or other members of the Forum. Consideration may be given to applying a collaborative approach to a particular FOI request in these circumstances.

8 ADVICE AND TRAINING

8.1 The Legal Support Officer responsible for responding to FOI requests attends the East of England FOI Forum and accesses updates on the process and particular information on specific problematic requests.

9 EQUALITY IMPACT STATEMENT

9.1 This protocol has been subject to an equality impact assessment and is not considered to discriminate against any of the protected characteristics.

10 REFERENCES

10.1 • Freedom of Information Act 2000
<http://www.legislation.gov.uk/ukpga/2000/36/contents>

10.2 • Information Commissioner <http://ico.org.uk>

11 DISSEMINATION OF DOCUMENT

11.1 This document will be distributed to relevant staff by publication on the intranet under policies and procedures / Legal Services.

12 MONITORING COMPLIANCE

Key elements	Process for Monitoring	By Whom (Individual / group /committee)	Responsible Governance Committee /Dept	Frequency of monitoring
Individual responsibilities	Appraisal and re-validation	Line manager	Workforce Committee	Annual
Committee responsibilities	Annual report	Chairperson IG Committee	Quality Committee	Annual
Compliance with performance measures	Report to IG Committee on departmental performance	Legal Services Manager	IG Committee	Bi-monthly
	Review of complaints from those making Freedom of Information requests	Legal Services Manager	IG Committee	6 Monthly

APPENDICES

EQUALITY IMPACT ASSESSMENT

STAGE 1 - SCREENING

Name & Job Title of Assessor: Martin Heywood, Legal Services Manager and Solicitor		Date of Initial Screening: March 2011	
		Date of Review: 21.1.2016	
Policy or Function to be assessed:			
		Yes/No	Comments
1.	Does the policy, function, service or project affect one group more or less favourably than another on the basis of:		
	• Race & Ethnic background	No	
	• Gender including transgender	No	
	• Disability:- This will include consideration in terms of impact to persons with learning disabilities, autism or on individuals who may have a cognitive impairment or lack capacity to make decisions about their care	No	
	• Religion or belief	No	
	• Sexual orientation	No	
	• Age	No	
2.	Does the public have a perception/concern regarding the potential for discrimination?	No	

If the answer to any of the questions above is yes, please complete a full Stage 2 Equality Impact Assessment.

Signature of Assessor: _____ Martin Heywood

Date: 21.1.2016

Signature of Line Manager: _____ Dr Beverly Watson

Date: 21.1.2016