

## Freedom of Information Act 2000 Policy and Procedure

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### Version Control Table

Version number and issue number	Date	Author	Reason for Change	Description of Changes Made
1.0	Jun12	Trish Richardson, Corporate Governance Manager		New Policy
1.1	Jan15	Trish Richardson, Strategic Planning Manager	Update	To take account of management restructure in 2014
1.2 2016066	Feb16	Jo Shoesmith, Freedom of Information Manager	Update	To take account of line management restructure in 2016
1.3 2017027	Jan 17	Jo Shoesmith, Freedom of Information Manager	Update	To take account of changes to telephone number, job title, staff member and Committee name in 2016

### Consultation Table

This document has been developed in consultation with the groups and/or individuals in this table:

Name of Individual or group	Title	Date
Information Governance Steering Group		04.02.15

This information may be made available in alternative languages and formats, such as large print, upon request. Please contact the document author to discuss.

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## **1. Introduction**

The Freedom of Information Act (FOI) Act came into effect in January 2000 and gives a general right of access to all types of recorded information held by public authorities.

Individuals already had the right of access to information about themselves under the Data Protection Act 1998. The FOI Act extended the right to allow access to all types of recorded information held by the Trust.

Under the FOI Act it is the Trust's duty to adopt a Publication Scheme setting out the classes of information held and how and when this information is published. The Trust's Publication Scheme is published on the Trust's website.

## **2. Purpose**

### **2.1 Rationale**

The Trust has made a commitment to both patients and staff to be as open and transparent as possible in the way that it works. This is a commitment which is supported by the Freedom of Information Act which gives people more rights to access information held by public authorities. The Trust will use all appropriate and necessary means to ensure compliance with the Act and the associated Codes of Practice.

The Trust supports the Government's commitment to greater openness in the public sector. Public authorities spend money collected from taxpayers, and make decisions that can significantly affect many people's lives. Access to information helps the public make public authorities accountable for their actions and allows public debate to be better informed and more productive.

The Act supports this aim by enabling members of the public to be able to access key documents and as such scrutinise and question the decisions of public authorities more closely and ensure that the services provided are properly delivered.

The Trust recognises that in addition to the FOI Act there is also an obligation on public authorities to respond to requests for environmental information under the Environmental Information Regulations (EIR) 2004. The Trust will, where appropriate, respond to requests for environmental information using the same procedures as for responding to FOI requests, whilst recognising that there are some differing regulations between EIR and FOI on the provision of information.

These include rules governing what environmental information may be disclosed (exceptions under EIR) and the requirement to respond to requests for environmental information whether the request is in writing or verbal form.

The main features of the Freedom of Information Act are attached at Appendix A.

### **2.2 Principles**

The Trust wishes to create a climate of openness and dialogue with all stakeholders and improved access to information about the Trust will help to support this aim. The Trust will make such information available in a range of formats as required to meet the needs of the person requesting the information where practicable including community languages, alternative formats and make reasonable adjustments as required.

The Trust believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duty of confidence or the statutory provisions that prevent disclosure of personal identifiable information. The release of such information is covered by the Data Protection Act 1998 and is dealt with in other policies of the Trust.

The Trust believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where either:

- An absolute exemption applies, or
- Where a qualified exemption can reasonably be applied in terms of the public interest disclosure.

See Appendix C for further detail on exemptions.

## **2.3 Scope**

The policy will provide a framework within which the Trust will ensure compliance with the requirements of the Act and will underpin any operational procedures and activities connected with the implementation of the Act.

## **3. Definitions**

### **3.1 Absolute exemption**

Applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of non-disclosure.

### **3.2 The Act**

The Freedom of Information Act 2000.

### **3.3 Applicant**

The individual(s), group or organisation requesting access to information under the Act.

### **3.4 Duty to confirm or deny**

Any person making a request for information to a public authority is entitled to be informed in writing whether the public authority holds the information specified in the request or not, except if an exemption applies.

### **3.5 EIR**

The Environmental Information Regulations 2004.

### **3.6 Fees Notice**

A written notification issued to an applicant stating that a fee is payable. It exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before the request lapses.

### **3.7 Fees Regulations**

National regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

### 3.8 General right of access

The Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. However, the Act specifies a number of circumstances when exemptions apply and specific information can be withheld.

### 3.9 Information Commissioner

The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Ministry of Justice is the sponsoring department within the Government. The ICO enforces and oversees the Data Protection Act, the Freedom of Information Act, the Environmental Information Regulations, and the Privacy and Electronic Communications Regulations.

### 3.10 Publication Scheme

A Publication Scheme contains all published corporate information held by a public authority. It is both a public commitment to make certain information available and a guide to how that information can be obtained. All publication schemes have to be approved by the ICO and should be reviewed by authorities periodically to ensure they are accurate and up to date.

### 3.11 Qualified exemption

Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure.

### 3.12 Recorded Information Held

The FOIA and the EIR apply to information held by public authorities. They do not have to create new information to respond to requests. A public authority is not creating new information where:

- It presents information it holds in the form of a list or schedule;
- Compiling an answer to a request involves simple manual manipulation of information held in files; or
- It extracts information from an electronic database by searching it in the form of a query.

### 3.13 Dataset

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. A re-usable form means that the dataset is in a machine readable form and based on open standards.

### 3.14 Vexatious request

Section 14(1) states that public authorities do not have to comply with vexatious requests. There is no public interest test. To decide whether a request is vexatious, its context and history need to be assessed. The key question is whether the request is likely to cause unjustified distress, disruption or irritation.

## **4. Accountabilities and Responsibilities**

### **4.1 Chief Executive**

The Chief Executive has the ultimate responsibility for the Trust's compliance with the Act. The Chief Executive will ensure that responsibility for bringing FOI issues to the Board is delegated to an appropriate Director (or equivalent). For this Trust the responsibility is delegated to the Director of Corporate Affairs.

### **4.2 Director of Corporate Affairs**

The Director of Corporate Affairs provides advice on complex requests and the application of exemptions under the Act. The Director of Corporate Affairs has the responsibility for ensuring any relevant FOI issues are brought to the attention of the Board and the conduct of any internal reviews where an applicant is dissatisfied in any way with a decision taken by the organisation on the provision of information (see Appendix B).

### **4.3 Directors and Clinical Unit Senior Management Teams**

Directors and the Clinical Unit Senior Management Teams have responsibility for the authorisation of the release of information from their Clinical Units to FOI requests.

### **4.4 General Managers/Heads of Nursing/Heads of Department**

These managers are responsible for the provision of information to respond to FOI requests. All managers will ensure that their staff are adequately supported to respond to FOI requests.

### **4.5 Freedom of Information Manager**

The Freedom of Information Manager oversees the management of the Freedom of Information operational process and duties include:

- Production and maintenance of the FOI policy and procedures and ensuring they are available in alternative formats as required
- Promotion of FOI awareness across the Trust through training and the dissemination of the FOI procedures in an accessible way to all staff groups;
- Working with the Communications Department to ensure that all staff and the general public are provided with information about their rights and responsibilities under FOI, in an accessible format
- Maintaining appropriate records of requests for information to enable monitoring and publication of request disclosure logs;
- Regularly updating the Publication Scheme in light of learning and best practice.

The Freedom of Information Manager, with the assistance of the FOI Administrator, will ensure that the work required to comply with the Act is carried out and ensure that all processes and procedures put in place meet the requirements of the Act. This will include:

- Providing advice and assistance to applicants requesting information under the Act
- Providing advice and assistance to staff in responding to requests under the Act
- Discussing particular requirements if requested by applicants, eg format in which the information is to be provided.

4.6 All Staff

This policy applies to all Trust employees and to Non-Executive Directors. Staff should familiarise themselves with the requirements of the Act and be aware of their personal responsibilities under the Act. This includes awareness that e-mail messages are subject to Freedom of Information and Data Protection legislation and therefore staff should manage e-mail messages with the same level of attention as that given to formal correspondence.

4.7 Information Commissioner's Office (ICO)

The ICO has a general duty to investigate complaints from members of the public who believe that an authority has failed to respond correctly to a request for information. If someone makes a complaint against the Trust, the ICO complaints handling process provides an opportunity for the Trust to reconsider its actions and put right any mistakes without the ICO taking any formal action.

If the complaint is not resolved informally, the ICO will issue a decision notice and, if the ICO finds the Trust has breached the Act, the decision notice will state the actions required of the Trust to rectify matters.

The ICO also has powers to enforce compliance if the Trust has failed to adopt the Publication Scheme or have not published information as it should whether or not a complaint has been received about this.



## 5. Procedures and Actions to Follow

This section sets out the procedures for the Trust to adopt in response to requests for information under the terms of the FOI Act 2000.

These procedures will facilitate the disclosure of information under the Act by setting out good administrative practice that the Trust will follow when handling requests for information. They have been produced as a requirement under the Code of Practice issued by the Secretary of State under Section 45(5) of the Act.

A failure to comply with the Code of Practice may result in action against the Trust by the Information Commissioner who, under Section 47 of the Act, has a duty to promote the observance of the Code by public authorities.

Section 16 of the Act places a duty on public authorities to provide advice and assistance to applicants. These procedures will facilitate compliance with this duty, which is again enforceable by the Information Commissioner. In the discharge of this duty the Trust will take account of other Acts of Parliament that may be relevant to the provision of advice and assistance to applicants, eg victimisation procedures within the Equality Act 2010 and also the Human Rights Act.

All staff must be aware of and adhere to these procedures.

All requests for information under the Act will be dealt with by the Freedom of Information Manager whose contact details are:

Freedom of Information Manager  
East Sussex Healthcare NHS Trust  
Eastbourne DGH  
Kings Drive  
Eastbourne, East Sussex  
BN21 2UD

E-mail: [esh-tr.foi@nhs.net](mailto:esh-tr.foi@nhs.net)  
Tel: 01323 413831

### 5.1 Using the Procedures

These procedures should always be followed when responding to requests for information under the Act. The Trust will, where appropriate, respond to requests for environmental information using the same procedures as for responding to FOI requests, whilst recognising that there are some differing regulations between EIR and FOI on the provision of information. These include rules governing what environmental information may be disclosed (exceptions under EIR) and the requirement to respond to requests for environmental information whether the request is in writing or verbal form. Subject Access Requests should be referred immediately to the Request for Information Department (e-mail: [esh-tr.SAR@nhs.net](mailto:esh-tr.SAR@nhs.net)) to be handled in accordance with the Data Protection Act 1998.

As information is made available by the Trust to stakeholders through staff on a daily basis, these procedures will not apply in all circumstances. Use of the procedures will not be required where:

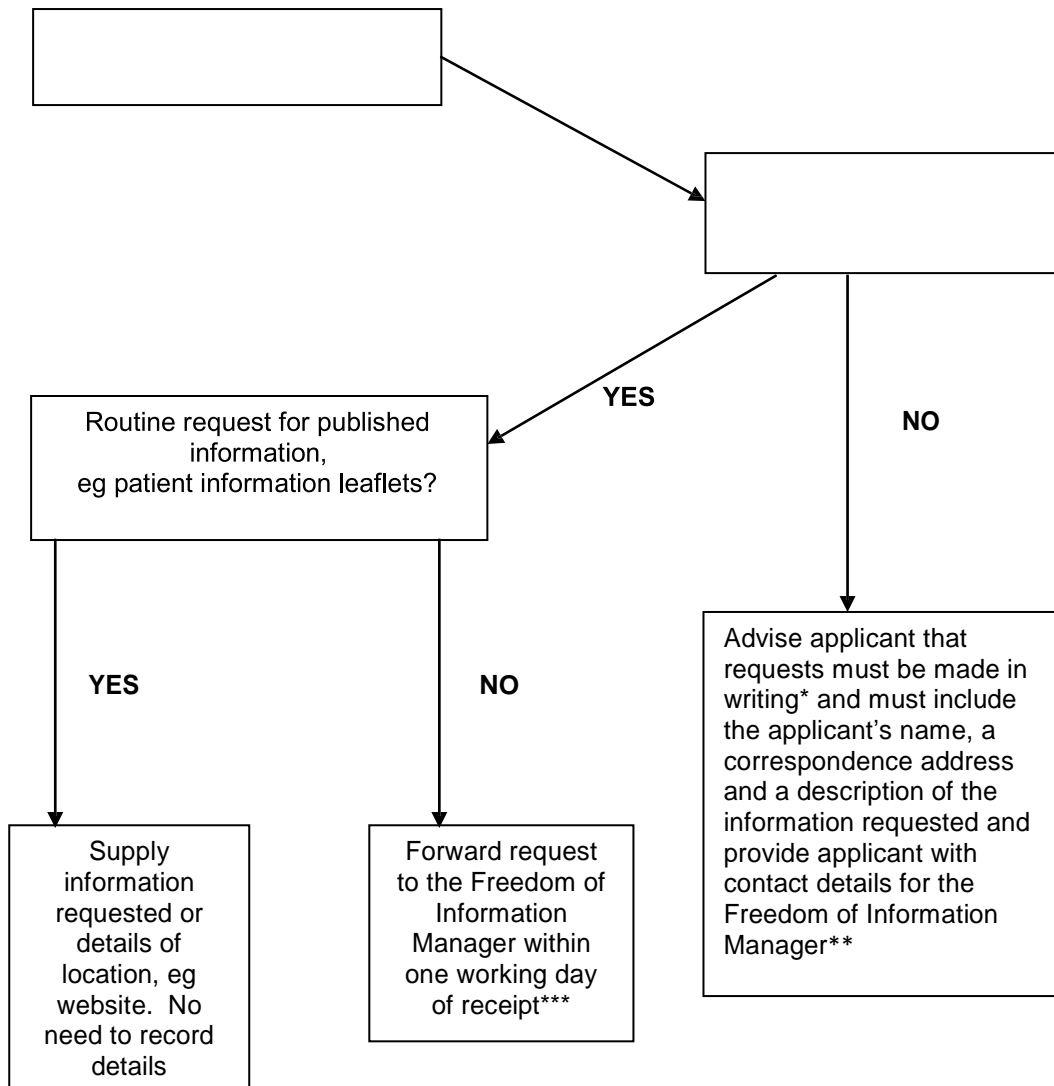
- The information is already reasonably accessible to the applicant by other means, eg publicity leaflets and other reference material

- Information is released as part of the Trust's normal business process, eg job application packs, information provided to a service user about their treatment or care;
- The correspondence is not a request for information;
- The request does not include a name and/or correspondence address;
- The request is not made in writing (an e-mail will be classed as a written request) - not applicable to environmental information requests;
- It is a request for access to health records or other personal data under the Data Protection Act 1998.

## 5.2 Dealing with Initial Application for Information (see figure 1)

All staff have a responsibility to deal with any request they may receive. Many applicants may not make their requests for information directly to the Freedom of Information Manager. Support will be provided to enable disabled people to put their requests in writing.

Figure 1 details the procedure that all staff should follow when an initial application for information is made.



**Figure 1**

\* Requests in writing may include e-mails, environmental information requests can be made verbally. All FOI requests must have the name of the applicant, a correspondence address and a description of the information requested.

\*\* Freedom of Information Manager, East Sussex Healthcare NHS Trust, Eastbourne DGH, Kings Drive, Eastbourne, East Sussex, BN21 2UD. Tel: 01323 413864, E-mail: [esh-tr.foi@nhs.net](mailto:esh-tr.foi@nhs.net).

\*\*\*To save time, written requests should be scanned and e-mailed as soon as possible to the FOI inbox. Original documentation can then be sent on to follow.

**NB. Although they are dealt with under the Freedom of Information Act, any requests for access to records of deceased patients should be forwarded immediately to the Request for Information Department, Eastbourne DGH, e-mail: [esh-tr.sar@nhs.net](mailto:esh-tr.sar@nhs.net).**

### 5.3 Processing Requests for Information (see figure 2)

An acknowledgement will be sent within two working days to inform the applicant that their request has been received and is being processed.

The Freedom of Information Manager will review the request and contact the applicant for further information if this is necessary to process the application. The Freedom of Information Manager will also review the information in respect of possible exemptions and/or fees and seek advice from the Director of Corporate Affairs if required. In some circumstances this will only become apparent when passed to the relevant manager for response.

The Freedom of Information Manager will inform the applicant if any charges or fees are applicable stating that no information will be provided unless the required fee or charge is paid within three months.

The details of the request for information will be entered onto Datix.

The Freedom of Information Manager will identify and contact the manager of the relevant staff, unit or department holding the information that the applicant has requested.

Upon receipt of a FOI information request, the manager has a total of **10 working days** to locate and provide the information requested to the Freedom of Information Manager. If it may not be possible to meet this deadline, the Freedom of Information Manager must be notified immediately.

Within **5 working days** the manager will need to confirm to the Freedom of Information Manager whether the information is held or not, or whether further searches are required in order to be able to confirm or deny.

As some requests may exceed the **appropriate cost limit (18 hours staff time or £450)**, prior to processing the request the manager should assess the time reasonably expected to be required to:

- Determine whether the information is held;
- Locate the information, or a document containing it;
- Retrieve the information, or a document containing it; and
- Extract the information from a document containing it.

If it is likely that the cost limit will be exceeded, a reasonable estimate must be submitted in writing to the Freedom of Information Manager within **5 working days**, who will then be able to provide advice and assistance to the applicant in order to further refine their request.

If the information is held, and the cost limit is not exceeded, the draft response and any associated attachments should be forwarded to the Freedom of Information Manager by the end of **10 working days** at the latest. The Freedom of Information Manager will then further review the information in respect of exemptions and/or fees and seek advice from the Director of Corporate Affairs if required.

The Freedom of Information Manager is able to provide advice on the FOI regulations to managers, but managers must take ownership and responsibility for co-ordinating responses within statutory deadlines for requests which relate to their areas of work.

The Freedom of Information Manager will draft the final response for sign-off by the Clinical Unit Management Team or relevant Executive Director.

## Freedom of Information Act 2000 Policy and Procedure

Once approved, the Freedom of Information Manager will send out the response, copying it to the communications department if there is a potential press/political impact.

Freedom of Information Act 2000 Policy and Procedure

Maximum 20 day working process

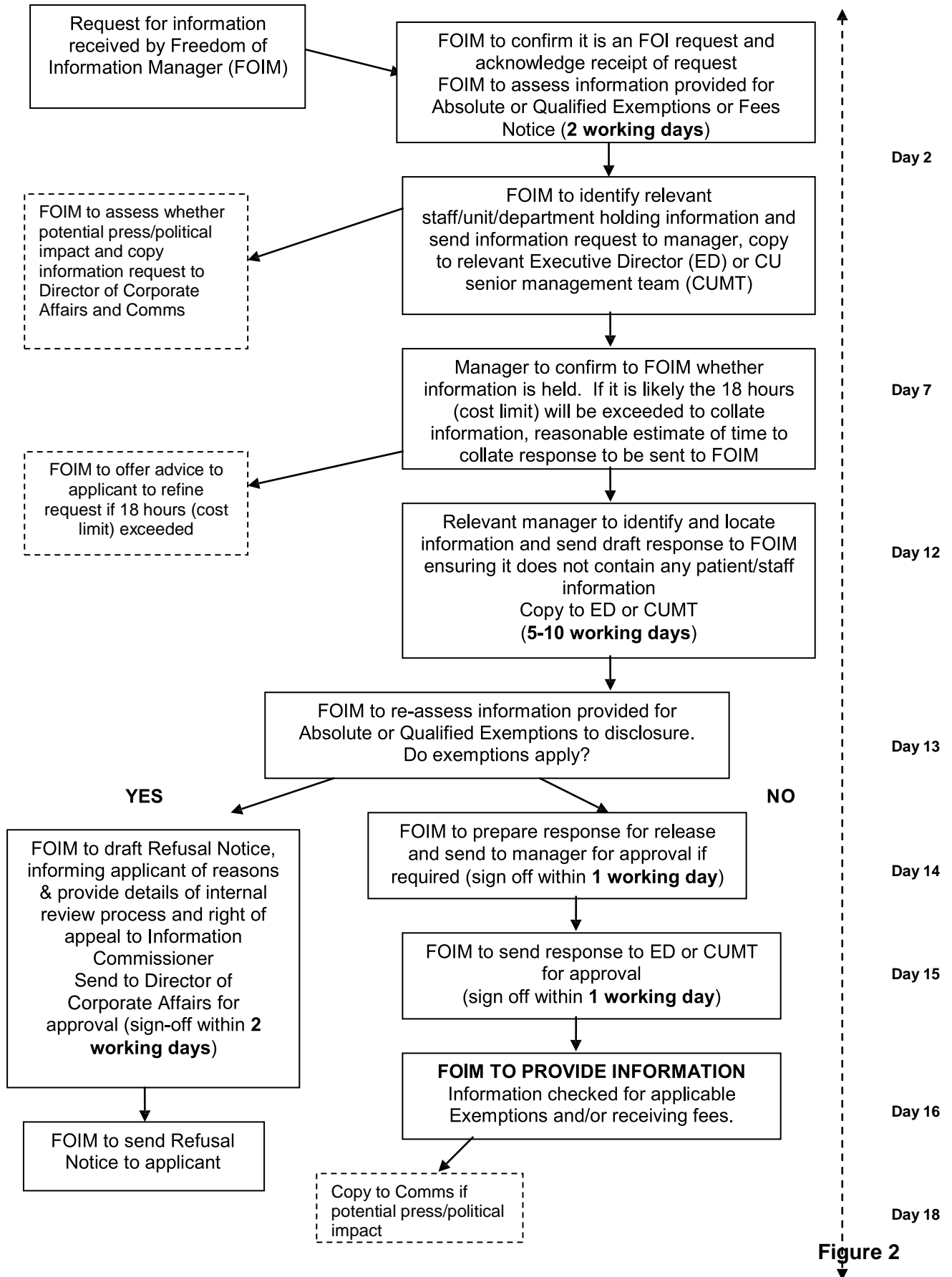


Figure 2

#### 5.4 Providing the Information

Once the information has been reviewed and if no exemptions apply and if no charge or fee is payable, the Freedom of Information Manager will provide the information to the applicant.

If any charge or fee is payable, a fees notice will be issued to the applicant as soon as this is known and the information will be released only when cleared payment is received.

Information will be provided to applicants by one or more of the following means, namely:

- As a **copy** of the information in permanent form or another form acceptable to the applicant;
- By providing the applicant with a reasonable opportunity to **inspect** a record containing the information;
- By providing a **digest or summary** of the information in permanent form or another form acceptable to the applicant.

Where a copy and/or a digest or summary is preferred and the information is to be made available electronically to the applicant, the electronic file shall be prepared and sent in a secure document format, ie Portable Document Form (PDF file), for reasons of integrity and security.

The Freedom of Information Manager will consider all the circumstances when providing information in a particular form, including the preferences stated in the original request and the practicalities. If the information being provided constitutes a dataset and the requester has expressed a preference to receive the information in an electronic form, the public authority must provide it in a re-usable form so far as reasonably practicable.

The Re-Use of Public Sector Information Regulations (RoPSI) give the public and the private sector the right to re-use public sector information which the Trust produces as part of its Public Task. The new Re-Use of Public Sector Information Regulations 2015 came into force on 18 July 2015 and replace the 2005 Regulations. Re-using the information means to use it for a purpose other than the initial public task it was produced for. All requests for re-use under the RoPSI regulations must be made in writing (preferably by email), including a name and address for correspondence, specifying the information requested for re-use and the purpose it is intended to be used for. Where the Trust permits re-use of information under the Re-Use of Public Sector Information Regulations 2015 it is licensed under the Open Government Licence.

When making such decisions, the Freedom of Information Manager will have regard for other statutory obligations upon the Trust such as those established under the Equality Act 2010.

#### 5.5 Charges and Fees

Any information that can be transmitted by e-mail will normally be provided free of charge.

Information provided in paper format will be free of charge for a single copy. Additional copies may be charged at 10p per sheet to a maximum of £250 unless an additional copy is being provided to a carer.

The production of information on formats other than paper (eg photographs, video, and transfer to CD-Rom) may incur a cost to the applicant which will be determined by the Freedom of Information Manager. Applicants will not be charged for the provision of a DVD or CD if part of reasonable adjustments.

The Trust is not obliged to process requests which exceed the appropriate cost limit. However, should the Trust decide to proceed with a request where the cost is greater than £450 or 18 hours of staff time, a fee notice may be issued for the staff time involved in identifying, locating and retrieving the information, or extracting the information from within a document. The cost of staff time is calculated at a rate of £25 per hour.

Any fee charged will be in line with The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The Fees Regulations do not apply to:

- (i) material made available under the Publication Scheme
- (ii) information which is reasonably accessible to the applicant by other means;
- (iii) where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosure of the information provided as in Sections 9(5) and 13(3) of the Act.

Where a fee or charge is payable, the Freedom of Information Manager will notify the applicant stating the amount payable and explaining how the fee has been determined.

Applicants will have 3 months in which to pay charges or fees. The information requested will not be provided until any charges or fees have been paid.

If charges or fees remain unpaid after three months the request will be invalidated and the applicant will be required to re-apply for the information and pay the outstanding fees and charges.

Rates for charges and fees for individual information requests will be reviewed regularly by the Director of Corporate Affairs.

Details of charges for information provided via the Publication Scheme are published on the Trust website.

## 5.6 Refusing Requests for Information

A request may be refused if:

- The information is exempt from disclosure under Part II of the Act;
- The applicant has an outstanding fees notice or charge;
- The costs of complying with a request exceed the appropriate limit;
- The request is demonstrably vexatious or repeated;
- The Trust has informed the applicant that further information is required to identify and locate the information requested and further clarification is not received.

When considering whether information may be exempt from disclosure under Part II of the Act, the Freedom of Information Manager may consult and seek advice as appropriate from the Director of Corporate Affairs.

When refusing to disclose information because of a “Qualified Exemption” as defined by the Act, the “Public Interest Test” will be considered by the Director of Corporate Affairs in making such a decision. **All refusals must be able to be justified to the Information Commissioner.** Appendix C gives details of all exemptions under the Act.

When a request for information is refused, the Freedom of Information Manager will write to the applicant explaining the reasons, specifying any exemption applied and why. The Freedom of Information Manager will inform the applicant of their rights to request an internal review and to appeal to the Information Commissioner and will provide contact details for the Commissioner.



NB. A further notice will not be issued where a notice has been issued stating that a request has been refused as it is vexatious or repeated.

#### 5.7 Providing Advice and Assistance to Applicants

The Freedom of Information Manager will provide advice and assistance to potential and actual applicants for information under the Act.

The advice and assistance will include:

- Guidance on how to access information from the Trust under the General Rights of Access and the Publication Scheme;
- Informing the applicant of the progress of their request;
- Explaining the basis upon which any charges or fees have been levied or exemptions applied;
- Suggesting other routes through which applicants may wish to access information, including from other public authorities;
- Identifying sources of independent help for applicants;
- Redirecting requests for personal data which need to be handled under the Data Protection Act 1998;
- Directing applicants to the internal review process and/or the Information Commissioner if they are dissatisfied with the Trust's response to their application for information;
- Assistance to applicants who are unable to make their request in writing which may include referral to Citizens Advice, Patient Advice and Liaison Service. NB the time limit for responding to requests will begin on receipt of the written application, except in the case of Environmental Information Regulation requests.

#### 5.8 Suspension of 20 Working Day Timescale

The Trust is obliged under the Act to respond to all requests for information within **20 working days**. This timescale will be suspended when:

- The Freedom of Information Manager contacts the applicant to obtain further information to progress the request;
- The Trust is awaiting payment of a charge or fee prior to the information being provided.

#### 5.9 Internal Review and Feedback

Comments and feedback about how the Trust carries out its obligations under the Act will be recorded by the Freedom of Information Manager and all instances of dissatisfaction will be forwarded to the Director of Corporate Affairs.

All requests for an internal review, verbal or written (including those transmitted by electronic means), about the Trust's compliance with the Act must be referred immediately to the Director of Corporate Affairs to be dealt with in accordance with the internal review process.

All complainants will be informed of their right under Section 50 of the Act to complain directly to the Information Commissioner, and will be given the Information Commissioner's contact details. Complainants who remain dissatisfied at the end of the internal review process will be advised to appeal to the Information Commissioner.

The FOI Manager will conduct an annual applicant survey to a random selection of applicants requesting their feedback on the service. The results of the survey will be reported to the Information Governance Steering Group.

Lessons learnt from feedback and complaints will be used to inform training needs, revisions to the policy and procedure and improve the information published by the Trust.

#### 5.10 'Round Robin' FOI Requests

A 'round robin' request is a request which has been sent to a wide number of public authorities or other NHS Trusts at the same time, seeking the same information.

In some cases the circulation list or wording of the request will make it clear that it is a 'round robin' request. In other cases it may be that FOI contacts in other organisations have highlighted its existence as such a request.

The Freedom of Information Manager may contact FOI colleagues in neighbouring Trusts to discuss the request received and how each Trust is responding.

### **6. Equality and Human Rights Statement**

An EHRA analysis has been undertaken and the policy was adjudged to be fair and equitable with no-one being disadvantaged.

### **7. Training**

The FOI page on the Extranet describes the training available to all staff and has specific links to helpful guidance on the ICO website and online Information Governance training. A range of other training methods will be considered in relation to identified needs.

Information Governance is a part of mandatory training, and is covered at induction of new staff and at mandatory training updates.

The FOI Manager will consider specific training to identified groups.

## 8. Monitoring Compliance with the Document

**Monitoring Table**

<b>Element to be Monitored</b>	<b>Lead</b>	<b>Tool for Monitoring</b>	<b>Frequency</b>	<b>Responsible Individual/Group/ Committee for review of results/report</b>	<b>Responsible individual/ group/ committee for acting on recommendations/action plan</b>	<b>Responsible individual/group/ committee for ensuring action plan/lessons learnt are Implemented</b>
Compliance	FOI Manager	Survey	Annual	Information Governance Steering Group	FOI Manager	Information Governance Steering Group
	Director of Corporate Affairs	Internal Reviews	On-going	Information Governance Steering Group	FOI Manager	Information Governance Steering Group

## 9. References

- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Information Commissioners Office (ICO) Freedom of Information guidance
- Codes of Practice on the discharge of public authorities' functions under Section 45 and 46 of the Freedom of Information Act
- ICO Practice Guidance: Charging for Information in a Publication Scheme
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
- ICO FOI Fact sheet: What does it mean for you

## Appendix A: Main Features of the Freedom of Information Act

The main features of the Act are:

- A General Right of Access from 1<sup>st</sup> January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions;
- A duty on public authorities to:
  - inform the applicant whether they hold the information requested; and
  - communicate the information to them, subject to certain conditions and exemptions;
- A duty on every public authority to adopt and maintain a Publication Scheme. This duty has been applicable to the NHS since 31<sup>st</sup> October 2003;
- The establishment of the office of the Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice together with an Information Tribunal;
- A duty on the Secretary of State and Lord Chancellor to establish Codes of Practice for guidance.

### Publication Scheme

The Trust has adopted a model Publication Scheme and this is permissible under section 20 of the Act and ensures compliance with Section 19 of the legislation.

The Trust has introduced Guides to Information using the ICO's Definition Documents which detail the information that the Trust has published and intends to publish in the future. It details the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Scheme and Guides to Information are available on the public website of the Trust and are available in other formats on request.

The contents of the Publication Scheme will be regularly reviewed and updated in light of feedback and trends analysis of individual information requests.

The majority of published information is available online free of charge. Applications for information listed in the Publication Scheme may also be received verbally or in writing.

### General Rights of Access

Section 1 of the Act gives a general right of access from 1<sup>st</sup> January 2005 to recorded information held by the Trust, subject to certain conditions and exemptions. Any person making a request for information to the Trust is entitled to:

- Be informed in writing, or any other appropriate format on request, whether the Trust holds the information described in the request; and
- Have that information communicated to them if it is held by the Trust and in an appropriate format on request.

This is referred to as the "duty to confirm or deny". These provisions are **fully retrospective**, meaning that, if the Trust *holds* the information when the request is received, it must be provided subject to certain conditions and exemptions.

The Act states that requests for information under the General Rights of Access must be received in writing and include:

- the name of the applicant,
- an address for correspondence, and
- a description of the information requested.

#### Duty to Provide Advice and Assistance

The Trust will ensure that systems and procedures are in place to provide advice and assistance to members of the public who propose to make, or have made requests for information. This is a duty under Section 16 of the Act.

The Trust will ensure that the systems and procedures to provide advice and assistance also conform to the Secretary of State's Code of Practice issued under Section 45 of the Act.

#### Conditions and Exemptions

The "duty to confirm or deny" and to provide information is subject to certain conditions and exemptions.

The duty to confirm or deny does not arise where the Trust requires further information in order to identify and locate the information requested and had informed the applicant of that requirement. The Trust will contact the applicant for additional information should it be required.

The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit in national fees regulations. The Trust will work with applicants to keep compliance costs to a minimum but they reserve the right to either refuse to comply with the request or to charge for the communication of information that exceeds this limit (see section on Charges and Fees for more information).

As stated in Section 14 (1) the Trust is not obliged to comply with a request for information if the request is vexatious. To decide whether a request is vexatious, the Director of Corporate Affairs will look at its context and history. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, the Trust will consider the following:

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

The Trust will log all requests for information for monitoring purposes and will be able to use this data to identify repeated or vexatious requests.

A tribunal decision on the disclosure of staff names and contact details has clarified the release of such information and there is no absolute rule that names should never be disclosed.

Taking into account the seniority of the persons involved, the availability of the information elsewhere and whether there are any credible risks to the subject when deciding whether to release the names, the Trust has decided that it is prepared to release the following information:

- Names and contact details for Divisional and Clinical Unit clinical and directorate management teams (the structures for the organisation will be available on the Trust's website)
- Salary bandings for Board members and those staff who have received remuneration in excess of the highest paid director (included in the Trust's Annual Report and Financial Statements)

Under Section 2 of the Act, the Trust does not have to comply with the duty to confirm or deny if the information is exempt under the provisions of Part II of the Act. These provisions either confer an **absolute exemption** or a **qualified exemption** (see Appendix D for details of exemptions).

By applying an **absolute exemption** the Trust may refuse to confirm or deny whether it holds the information requested.

A **qualified exemption** also allows the Trust the same right to neither confirm nor deny subject to a "public interest test" (see Public Interest Test section). This means that the Trust must demonstrate, in all circumstances of the case, that the public interest in refusing to confirm or deny outweighs the public interest in favour of disclosure.

Requests for information about deceased individuals will be considered under the FOI Act except in cases where a request is made by a personal representative who may have rights of access to personal data e.g. medical records under the Access to Health Records Act 1990 (AHRA). If the applicant has access rights under the AHRA, the Section 21 exemption (information available by other means) would apply to the FOI request and access will be dealt with under the AHRA.

Most information in medical records is likely to be confidential and exempt under Section 41. However, this exemption may not apply to any information already made public, for example on a death certificate or in an inquest or coroner's court, especially if publication was very recent or widely reported. In considering such requests the Trust will apply any relevant exemptions with consideration to any duty of confidence.

### Public Interest Test

The public interest will be considered in every case where qualified exemption may apply. Defining the public interest will vary according to the information being requested. It may often involve issues around accountability, transparent decision making and good management. When considering the public interest to reach a decision on a qualified exemption, the Trust will seek appropriate professional advice (including legal advice) where necessary.

### Charges and Fees

The Trust will follow the national fees regulations for General Rights of Access under the Act. These will determine appropriate limits on charges and fees, how they may be calculated and in what circumstances no fee should be levied.

Where charges are applicable, a fees notice will be issued to the applicant, as required under Section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them. The Trust will not be obliged to proceed with any request if the fee is not paid within this timescale.

### Transferring Requests for Information

When responding to requests for information, the Trust can only provide information that it holds. If the Trust receives a request for information which it does not hold (or holds only in part) but which is held by another public authority, then the Trust will consider what would be the most helpful way of assisting the applicant with their request.

This is likely to involve:

- informing the applicant that the information requested may be held by another public authority;
- suggesting that the applicant re-applies to that authority;
- providing the applicant with contact details for that authority.

### Consultation with Third Parties

There will be instances where information requested under the Act will include information relating to third parties (i.e. references to organisations or individuals other than the Trust). Such information will normally be disclosed unless:

- it is “personal data”, as defined by the Data Protection Act 1998 (DPA) and in guidance issued by the Information Commissioner;
- where disclosure without consent would constitute an actionable breach of confidence as described in Section 41 of the Act;
- where common law duty of confidence is owed (e.g. information concerning a deceased patient).

Where none of the conditions described above apply and where there are no other exemptions, the Trust will normally be obliged to disclose the information requested.

The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of their functions and it would not be otherwise provided.

The Trust will not agree to hold information “in confidence” where it is not in fact confidential in nature, that is, where the information has been obtained by the Trust from another organisation or individual and the disclosure of the information to the public, otherwise than under the Act, would constitute an actionable breach of confidence. Acceptance of any confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

### Managing Contracts

When entering into contracts, the Trust will refuse to include contractual terms which seek to restrict the disclosure of information relating to the contract, beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any



particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of the contract.

When entering into contracts with non-public authority contractors, the Trust may be asked to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance are exempt from disclosure. Such clauses will be rejected wherever possible. Where, exceptionally, it is in the public interest to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed.

When drawing up any such schedule the Trust will be mindful that any restrictions on disclosure could potentially be overridden by obligations under the Act and that such confidentiality provisions must be for good reasons and be capable of being justified to the Information Commissioner.

In order to avoid unnecessary secrecy, any such constraints on disclosure will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

#### Time Limits for Compliance with Requests

The Trust has established systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within 20 working days of a request, in accordance with Section 10 of the Act. All staff will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

When a charge or a fee has been incurred and the applicant has paid this in accordance with Section 9 (2) of the Act, the working days in the period between the applicant's receipt of the fees notice and the Trust's receipt of their cleared payment will not be included when calculating the 20 working days for responding to a request.

If the Trust chooses to apply an exemption of any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within 20 working days informing the applicant of this decision.

If the Trust is unable to reach a decision within the 20 working day period on whether or not an exemption is to be applied the applicant must be informed.

#### Method of Providing Information

In accordance with Section 11 of the Act a requester may express a preference for one or more of three means of communication when making their request. The Trust will convey information by this means where it is reasonably practicable. The following preferences may be expressed:

- The provision to the applicant of a **copy** of the information in permanent form or in another form acceptable to the applicant;
- The provision to the applicant of a reasonable **opportunity to inspect** a record containing the information;
- The provision to the applicant of a **digest or summary** of the information in permanent form or in another form acceptable to the applicant.

- The provision to the applicant of a dataset in a re-usable form as far as reasonably practicable.

The Trust does not have to consider preferences specified at a later date.

Where a copy and/or a digest or summary is preferred and the information is to be made available electronically to the applicant, the electronic file shall be prepared and sent in a secure document format, i.e. Portable Document Format (PDF file) for reasons of integrity and security.

If the Trust decides that it is not reasonably practicable to comply with any preference expressed by the applicant, the Trust will inform the applicant of the reasons for their decision and will discuss if it is possible to provide the information by another means.

The Trust has established systems and procedures to monitor the provision of information arising from requests under the Act.

### Refusal of Requests

As indicated in Section 2.5 Conditions and Exemptions, the duty to confirm or deny the existence of information or provide the information to the applicant does not arise if:

- The Trust applies an exemption under Part II of the Act (as illustrated in Appendix D);
- To confirm or deny information is held would in itself constitute an actionable breach of confidence or have a prejudicial effect;
- The Trust has requested further clarification of the request and has not received a response;
- The Trust has issued a fees notice to the applicant under Section 9 of the Act and the fee has remained unpaid after a three month period;
- The Trust estimates that the cost of compliance with the request for information exceeds the appropriate limit; it may also not be possible to confirm or deny whether the information is held if the search process would exceed the appropriate limit;
- The Trust can demonstrate that the request for information is vexatious or repeated.

If the Trust intends to refuse a request for information, the applicant will be informed of the reason(s) for this decision within 20 working days. The applicant will also be informed of their rights, conferred by Section 50 of the Act, to request an internal review of the decision and to appeal to the Information Commissioner against the decision.

If the Trust decides to refuse to confirm or deny whether they hold the information requested and/or to refuse to provide that information, an exemption notice will be issued to the applicant within 20 working days which will:

- State the decision to refuse;
- Specify the exemption in question; and
- Explain why the exemption applies (if it is not already apparent)

If the Trust is unable to reach a decision on the application of an exemption within the 20 working day period, then the applicant will be given notice that no decision has been reached and an estimate of the date by which the Trust expects that the decision will have been reached.

As indicated by the Secretary of State's Code of Practice issued under Section 45 of the Act, the Trust will endeavour to make such estimates realistic and reasonable. If an estimate is exceeded, the applicant will be given a reason for the delay and offered an apology. If the Trust finds, whilst considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed.

The Trust will keep a record of instances where estimates are exceeded, and, where this happens more than occasionally, take steps to identify any problems and rectify them.

If applying a qualified exemption under Part II of the Act using the "public interest test", the Trust will, in its notice to the applicant, state the reasons for claiming:

- That, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information; or
- That, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The notice should not involve the disclosure of information which would itself be exempt information.

The Trust will keep a record of all notices issued to refuse requests for information.

#### Complaints about the Discharge of the duties of the Trust under the Act

Any expression of dissatisfaction from an applicant (written or verbal) with reference to the Trust's response to a valid request for information or its compliance with the Publication Scheme will be handled through an internal review process which will be conducted within 20 working days.

When responding to requests for information where it has not been possible to supply all the information requested, the Freedom of Information Manager will inform the applicant of the procedure for requesting an internal review. Refusal notices should also refer applicants to their rights under Section 5 of the Act to apply to the Information Commissioner if they remain dissatisfied with the outcome of the internal review process.

The detailed review procedure is provided in Appendix B.

#### Records Management

The Trust has a separate Corporate Records Management Policy with supporting procedures that will ensure compliance with the Department of Health Code of Practice on Records Management under Section 46 of the FOI Act 2000.

The policy and associated procedures address issues of active records management (creation, keeping, maintenance and disposal) according to the requirements that the law places upon the Trust. All staff are expected to comply with the Trust's policy and procedures.

## Appendix B: FOI Internal Review (Complaint) Procedure

### 1. Introduction

Part VI of the Section 45 Code of Practice states that it is good practice for public authorities subject to the Freedom of Information Act 2000 to set up specific procedures to allow an applicant, who is dissatisfied in any way with a decision taken by the organisation on the provision of information, to require an internal review of the decision taken.

The requirement for a review can arise in a number of circumstances including (but not limited to):

- Where we indicate that we do not hold the information but the applicant believes we do;
- Where the applicant feels that we have not provided the advice and assistance we should have done;
- Where the applicant feels that exemptions have been wrongly applied;
- Where we have failed to supply the information requested or failed to reply within the 20 working days limit;
- Where the applicant feels the charge for providing the information is higher than it should be.

If an applicant is dissatisfied in any way, they can require the Trust to review the way the request was handled or the decision reached.

### 2. Requests for a Review

The response to a request for information will advise the applicant that if they are dissatisfied with the information provided they should write to the Director of Corporate Affairs outlining their concerns.

Requests for a review must be made in writing (letter, e-mail or other electronic means) and include a return address for the Trust to be able to reply to. The applicant should provide a brief statement as to why they wish a review to be undertaken.

Requests for internal review must be addressed to:

Director of Corporate Affairs  
c/o Freedom of Information Manager  
East Sussex Healthcare NHS Trust  
Eastbourne DGH  
Kings Drive  
Eastbourne, East Sussex, BN21 2UD

E-mail: [esh-tr.foi@nhs.net](mailto:esh-tr.foi@nhs.net)

### 3. Review Process

Any internal review should be dealt within a reasonable timeframe. The Information Commissioner's view is that a reasonable time for completing an internal review is **20 working days** from the date of the request for review and only exceptional cases should take longer. The Information Commissioner considers that no case should take longer than **40 working days**.

The review procedure may result in a different decision to that originally taken and will be binding on the organisation. The procedure should be accessible, prompt, fair and impartial.

The following procedure will be adopted for dealing with requests for an internal review:

- a) The Director of Corporate Affairs will acknowledge receipt of the request within 2 working days and state that it is Trust policy to respond to internal reviews within 20 working days.
- b) If it becomes clear at any stage of the internal review that this deadline will not be met, the Director of Corporate Affairs will advise the applicant accordingly. An extension of the 20 day working deadline should be for exceptional circumstances only and the applicant will be kept fully informed throughout the internal review process. The Trust will ensure that the timeframe for response does not exceed 40 working days.
- c) The Director of Corporate Affairs will send the request, together with any comments on the original decision, to the Director of the area who provided the original information and ask him/her to consider the request for review and reach a decision on how to respond within the 20 working days deadline. The Director will respond to the Director of Corporate Affairs in writing of their decision.
- d) The Director of Corporate Affairs will:
  - Advise the applicant in writing of the decision on their request for internal review;
  - Offer an apology if the applicant has been unfairly treated;
  - Any remedial information (eg provision of information requested where appropriate) is sent to the applicant without delay so as to be received within the 20 day timescale for reviewing the request;
  - Advise the applicant of their right to raise the matter further with the Information Commissioner if they remain dissatisfied with the decision of the organisation including the contact address and website address as follows:

Information Commissioner's Office  
Freedom of Information  
Wycliffe House  
Water Lane  
Wilmslow, Cheshire SK9 5AF

Website: [www.ico.org.uk](http://www.ico.org.uk)

- Procedures are reviewed to ensure the organisation learns from the decisions reached on review.

## Appendix C: Exempt Information under Part II of the FOI Act 2000

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

There are two types of class exemption:

- a. **Absolute**, which does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- b. **Qualified**, by the public interest test, which require the public body to decide whether it is in the balance of public interest test to not disclose the information.

With the exception of Section 21 (information available by other means) exemptions decide whether it is in the balance of public interest not to disclose information.

The *absolute* exemptions under the Act are:

- Section 21 – Information accessible to applicant by other means
- Section 23 – Information supplied by, or relating to, bodies dealing with security matters
- Section 32 – Court Records
- Section 34 – Parliamentary Privilege
- Section 36 – Prejudicial to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40 – Personal Information (where disclosure may contravene the Data Protection Act 1998)
- Section 41 – Information provided in confidence
- Section 44 – Prohibitions on disclosure (where disclosure is prohibited by either an Act of Parliament, a European Community obligation or where disclosure would constitute or be punishable as a contempt of court)

The exemptions that are *qualified* by the public interest test are:

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

**Appendix D: Keeping Records of FOI Requests****KEEPING RECORDS OF INFORMATION REQUESTS**

The FOI Manager will record the following information for monitoring purposes, part of which will be recorded on the Datix software system.

	<b>Datix</b>
Initial date of receipt of request by the Trust	√
Date received by the Freedom of Information Manager (if different from above)	√
Name of applicant and contact details. (not required for Environmental Information requests)	√
Summary of information requested	√
Letter/email acknowledging receipt of request to applicant	√
Name and contact details of person(s) information request has been allocated to	√
Date information requested from person(s) information request has been allocated to	√
Information given on progress of request to applicant (when necessary)	√
Advice and assistance given by Freedom of Information Manager to applicant	√
Date of issue, receipt and payment by applicant of any fees or charges (when necessary)	√
Decision making processes leading to application of exemptions or the refusal of requests	
Notifications of a refusal of a request to applicant	√
Information on any transfers of requests to other public authorities	√
Information on any consultation and decision making with third parties on the disclosure of information (when necessary)	√
Date the response was sent to the applicant	√
Record of instances where there is a difference between the format in which the information was provided and the format in which it was requested. Reasons for this as communicated to applicant.	√
Date of a request for an internal review	√
Reasons for request for an internal review	√
Name and contact details of person(s) internal review request has been allocated to	√
Information on any consultation and decision making with third parties on the internal review request (when necessary)	√
Decision on the internal review	√
Date decision was sent to applicant	√
Date any further information sent to applicant	√
Detail of any changes in procedure following an internal review	