

Freedom of Information Policy

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| Publisher: | Mike Boulton, Policy Manager |
| Date of first issue: | January 2005 |
| Version: | 4.0 |
| Date of version issue: | January 2019 |
| Approved by: | Andrew Bertram: SIRO |
| Date approved: | January 2019 |
| Review date: | January 2022 |
| Target audience: | All staff with responsibility for Trust information |

Executive Summary

The Freedom of Information (FOI) Act 2000 came into force in January 2005. The Act aims to end unnecessary secrecy in public authorities, including the NHS. It will enable members of the public to question decisions made by public authorities more closely, ensuring that services are delivered properly and efficiently.

This policy sets out a framework within which the Trust will ensure compliance with the requirements of the Freedom of Information (FOI) Act 2000.

The Act embodies most of what is already good practice in the NHS, and replaces the non-statutory *Code of Practice on Openness in the NHS*.

The current version of any policy, procedure, protocol or guideline is the version held on Trust Public Folders. It is the responsibility of all staff to ensure that they are following the current version

Version History Log

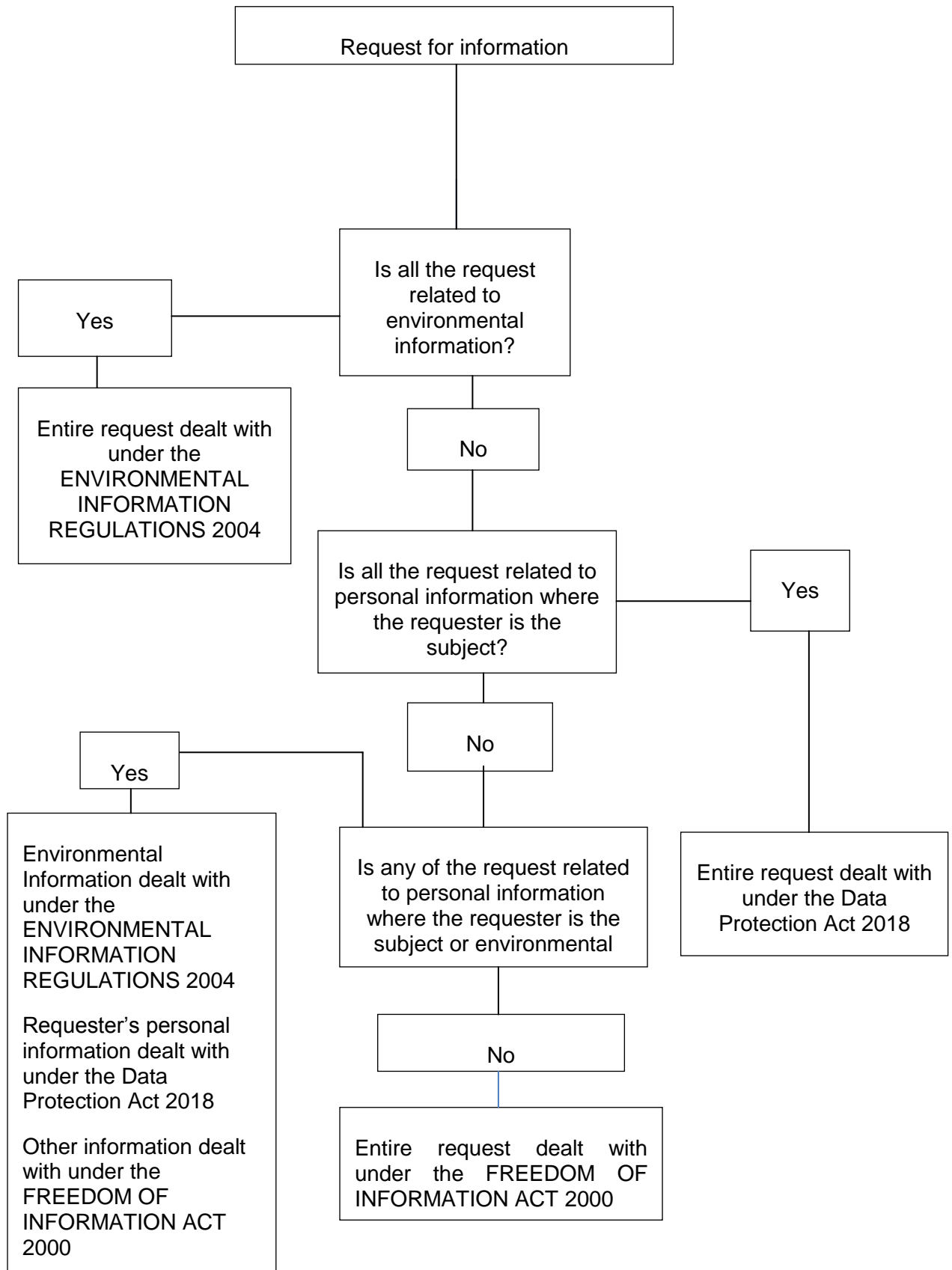
This area should detail the version history for this document. It should detail the key elements of the changes to the versions.

| Version | Date Approved | Version Author | Status & location | Details of significant changes |
|----------------|----------------------|-----------------------|------------------------------|---|
| 2.0 | Jan 2010 | Kate Ayres | Trust Intranet | Additional information provided on Environmental Information Regulations. Changes to approval process of responses |
| 3.0 | Jun 2013 | Susan Hall | Trust Intranet | New policy template applied. Addition of measures required by Protection of Freedoms Act 2012. Simplified approach to Re-use of Public Sector Information. Staff contact details now only released at Director level. |
| 4.0 | Jan 2019 | Fiona Jamieson | Trust Intranet | Updated with reference to The General Data Protection Regulation (EU) 2016/679 (GDPR). |

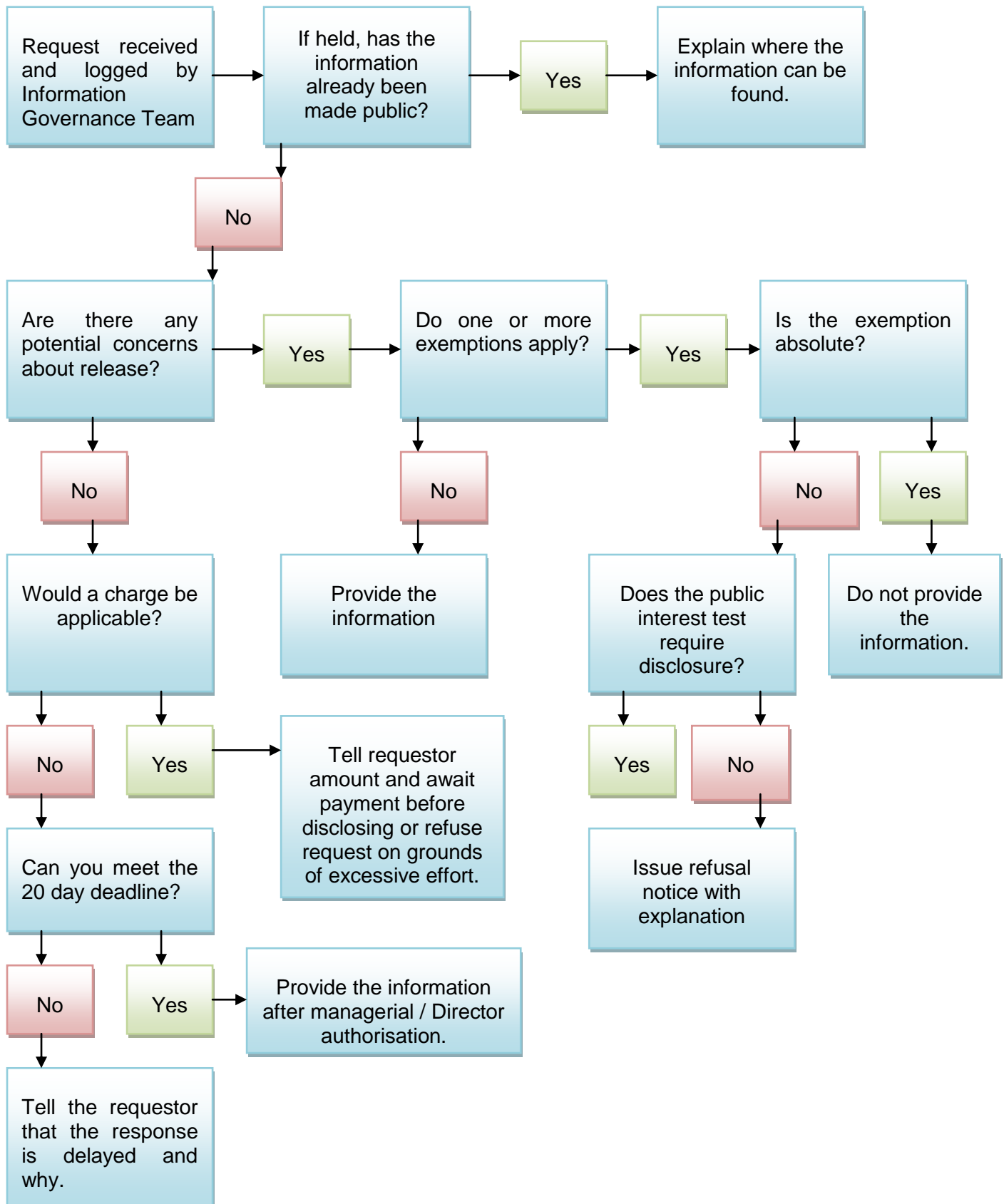
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Process flowchart I: Which Act?



Process flowchart II: Responding to FOI Requests



1 Introduction & Scope

1.1 The Freedom of Information (FOI) Act 2000 came into force in January 2005. The Act aims to end unnecessary secrecy in public authorities, including the NHS. It will enable members of the public to question decisions made by public authorities more closely, ensuring that services are delivered properly and efficiently. The Act embodies much of what is already good practice in the NHS, and replaces the non-statutory *Code of Practice on Openness in the NHS*.

1.2 The main features of the Act are:

- A general right of access to recorded information held by public authorities (subject to certain conditions and exemptions.)
- A duty on every public authority to adopt and maintain a Publication Scheme. A Publication Scheme is essentially a guide to the information a public authority routinely publishes. They help the public to understand what a public authority does and the services it provides.
- The creation of two offences, namely:
 - (a) the concealment or destruction of information which has been requested, with the intention of preventing its disclosure, and
 - (b) The obstruction of any person in execution of a warrant. An offence can be committed by the public authority and any person who is employed by, is an officer of, or subject to the direction of, the public authority. There is a maximum punishment of two years imprisonment for offences under the Act.

1.3 The Trust already complies with the requirement to publish a Publication Scheme, and responding to requests under the general rights of access. The purpose of this Policy is to ensure that staff are aware of their obligations and rights under the Act, and that the Trust complies fully with all legal and ethical requirements.

1.4 The Policy has been prepared by reference to authoritative guidance from the Lord Chancellor, the Department of Constitutional Affairs and the Information Commissioner's Office. Key guidance documents are listed at Section 12 of this Policy, along with related policies and procedures.

1.5 The Policy applies to records held by the Trust in any form, printed or held electronically. Information may be presented as formal documents such as a Policy, report or minutes of meetings, or

information contained in email exchanges involving members of staff. All are potentially disclosable in response to an FOI request.

- 1.6 The Freedom of Information Policy applies to all Trust staff and to Non-Executive Directors.
- 1.7 The Policy will provide a framework within which the Trust will ensure compliance with the requirements of the Act.

2 Definitions / Terms used in policy

None requiring further explanation.

3 Policy Statement

- 3.1 The Trust is committed to developing a culture of openness in the conduct of its affairs and will use all appropriate and necessary means to ensure that they comply with the Freedom of Information Act 2000.
- 3.2 The Trust will maintain a Publication Scheme in line with the Information Commissioner's guidance. The Publication Scheme will be available in hard copy on request, at the Main Reception Desk of York Hospital and on the Trust website. It will be subject to regular review by the Information Governance Team.
- 3.3 Applications for information listed in the Publication Scheme may be received verbally or in writing. The Trust has established a system and procedure to process applications arising from the Publication Scheme.
- 3.4 The Trust has established systems and procedures to process requests for information under the general rights of access created by the FOI Act. A summary diagram is given at the start of this document. All requests should be routed through the Information Governance Officer based within the Communications Team in the Chair & Chief Executive's Office, York Hospital. Support is provided from the Information Governance Team based in Park House. The dedicated email address is foi.requests@york.nhs.uk
- 3.5 The Trust will establish systems and procedures to ensure that information is supplied within twenty working days of a request in accordance with Section 10 of the Act. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.
- 3.6 The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for

hard copies, multiple copies and copying on to media such as CD-ROM.

- 3.7** The Trust will put measures in place to comply with the Re-use of Public Sector Information Regulations. These will include the publication of licence terms for those wishing to re-use information obtained under FOI.
- 3.8** The Trust will follow the national Fees Regulations for general rights of access under the Act. These set a limit of £450 on the cost of complying with a request, equivalent to 18 hours' staff time spent in locating, retrieving and extracting the requested information. The regulations indicate that no fee should be levied for requests which fall within the cost limit, and where photocopying and/or printing costs amount to less than £5 or £10.
- 3.9** The Trust will take all reasonable steps to provide information in the form preferred by the applicant.
- 3.10** In accordance with the extension of the FOI Act created by the Protection of Freedoms Act 2012, the Trust will make datasets available for re-use and, where reasonably practicable, in a re-usable format when releasing them in response to requests or through its Publication Scheme.
- 3.11** The Trust will only withhold information where legally justified and necessary to prevent harm. It will put in place systems to ensure the exemptions are properly applied. The exemptions are set out at Appendix A to this Policy. Difficult or potentially contentious cases will be approved by the relevant Director or Deputy Chief Executive. Legal advice will be sought where agreed necessary by the Director or Deputy Chief Executive. A record will be kept of legal advice sought and obtained from the Trust's solicitors. Any decision to withhold information will be notified to the applicant with appropriate explanation as set out in the Act.
- 3.12** The Trust will implement a procedure for dealing with complaints about the discharge of their duties under the Act, including the handling of requests for information. The procedure will refer applicants to the right under Section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of either organisation following attempts at local resolution of their complaint.
- 3.13** The Act gives detailed guidance on handling requests for personal information. If the person requesting the information is the subject of the information then they have no right to it under the Freedom of

Information Act, and the request becomes a subject access request under the General Data Protection Regulation (GDPR). If the personal data relate to someone other than the applicant, there is an exemption if disclosure would breach any of the Data Protection principles. This provides protection, for example, for personal information about patients.

- 3.14** When handling requests for information relating to its staff, the Trust will seek to balance the individual's right to privacy with the accountability that goes with working in the public sector. As a general rule, contact details will be released for staff operating only at Director Level. Limited exceptions will be made in the case of public-facing roles where the post-holder agrees to the release.
- 3.15** Information about third parties will not be treated as confidential unless that information is covered by a specific exemption within the Act. For example, where a non-public authority contractor is employed by the Trust and someone makes a request for information about the performance of the contract, the Trust will normally be obliged to disclose the information. Consultation with the contractor will only be undertaken in exceptional circumstances, where the Trust considers it necessary to establish if an exemption applies. The Trust will ensure that appropriate FOI clauses are included in contracts.
- 3.16** In some circumstances a disclosure of information cannot be made without the consent of a third party – for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence as defined in Section 41 of the Act. Under such circumstances the Trust will normally consult that third party with a view to seeking their consent to the disclosure. Exceptionally, consulting may not be practicable, for example because a third party cannot be located or because the costs of consulting them would be disproportionate. In such cases, the Trust will consider what is the most reasonable course of action for it to take in light of the requirements of the Act, and the individual circumstances of the request.
- 3.17** The Trust recognises the importance of effective records management – creation, keeping, maintenance and disposal – in achieving compliance with the Freedom of Information Act. It has developed a separate policy with supporting systems and procedures that ensure compliance with the Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the

Act and the Department of Health's guidance Records Management: NHS Code of Practice.

3.18 Environmental information is covered by the Environmental Information Regulations. Requests for information on the following areas will be processed in accordance with the Regulations:

- The state of the elements of the environment, such as air, water, soil, land, fauna (including human beings).
- Emissions and discharges, noise, energy, radiation, waste and other substances.
- Measures and activities such as policies, plans and agreements affecting or likely to affect the state of the elements of the environment.
- Reports, cost-benefit and economic analyses.
- The state of human health and safety, contamination of the food chain.
- Cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment).

Further information on the exceptions applicable under EIR is detailed in Appendix B.

4 Equality Impact Assessment

The Trust aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at an unreasonable or unfair disadvantage over others.

In the development of this policy, the Trust has considered its impact with regard to equalities legislation. A record of the Equality Impact Assessment is given at Appendix C.

5 Accountability

5.1 The Chief Nurse will oversee the implementation of this Policy on behalf of the Chief Executive.

5.2 Working to the Assistant Director of Healthcare Governance, the Information Governance Lead will maintain systems and procedures to support the implementation of this Policy.

5.3 All staff and Non-Executive Directors are obliged to adhere to this Policy. In particular, they must:

- On receipt of any written request for information, made under the Act, forward it immediately to the Information Governance Team for action.
- Where approached by the Information Governance Team, provide responses within the defined timescales.
- Directors should respond as soon as possible to requests for approval of draft responses, and nominate a deputy to cover in their absence.

5.4 Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this Policy. They are also responsible for ensuring staff are updated in regard to any changes in this Policy.

APPENDIX 1: The Exemptions

Part II of the Act specifies a number of exemptions from the requirement to disclose. There are two types of exemption:

- (a) **ABSOLUTE**, in which case the authority does not have to confirm or deny that it holds the information, and
- (b) **QUALIFIED**, by the public interest test, which requires the public body to decide whether it is in the balance of public interest to disclose information or withhold it.

The absolute exemptions under the Act are:

- Section 21, Information accessible to the 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, Prejudice to the 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)
- Section 41, Information provided in confidence
- Section 44, Prohibitions on disclosure

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, Prejudice to the effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37, Communications with Her Majesty, etc and honours
- Section 38, Health and Safety
- Section 39, Environmental Information
- Section 42, Legal Professional Privilege
- Section 43, Commercial Interests

More information on the exemptions can be found on the Department for Constitutional Affairs website at:

<http://www.dca.gov.uk>

APPENDIX 2: Environmental Information Regulations

The regulations give members of the public the right to access environmental information held by public authorities. The request can be made by letter, email, telephone or in person.

All the exceptions within the Regulations are subject to the public interest test. The public authority may refuse to disclose information if:

- Regulation 12(3) Personal data
- Regulation 12(4)(a) Information not held when receiving a request
- Regulation 12(4)(b) Manifestly unreasonable
- Regulation 12(4)(c) Request is too general
- Regulation 12(4)(d) Material in the course of completion, unfinished documents and incomplete data
- Regulation 12(4)(e) Disclosure of internal communications
- Regulation 12(5) Adverse effect
- Regulation 12(5)(a) International relations, defence, national security or public safety
- Regulation 12(5)(b) The course of justice, the ability of a person to obtain a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature
- Regulation 12(5)(c) Intellectual property rights
- Regulation 12(5)(d) The confidentiality of the proceedings of a public authority where such confidentiality is provided by law
- Regulation 12(5)(e) The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
- Regulation 12(5)(f) The interests of the person who provided the information where the person –
 - (i) was not under, and not have been put under, any legal obligation to supply it to that or any other public authority
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 - (iii) has not consented to its disclosure
- Regulation 12(5)(g) The protection of the environment to which the information related
- Regulation 12 (9) Information relating to emissions

Appendix 3: Equality Impact Assessment

| | | Yes/ No | Comments |
|---|--|------------|----------|
| 1 | Does the policy/guidance affect one group less or more favourably than another on the basis of: | | |
| | Race | No | |
| | Ethnic origins (including gypsies and travellers) | No | |
| | Nationality | No | |
| | Gender (including gender reassignment) | No | |
| | Disability – learning disabilities, physical disability, sensory impairment and mental health problems | No | |
| | Culture | No | |
| | Religion or belief | No | |
| | Sexual orientation including lesbian, gay and bisexual people | No | |
| | Age | No | |
| 2 | Is there any evidence that some groups are affected differently? | No | |
| 3 | If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable? | N/a | |
| 4 | Is the impact of the policy/guidance likely to be negative? | No | |
| 5 | If so can the impact be avoided? | N/a | |
| 6 | What alternatives are there to achieving the policy/guidance without the impact? | N/a | |
| 7 | Can we reduce the impact by taking different action? | N/a | |

Appendix 4: Policy Management

1 Consultation, Assurance and Approval Process

- 1.1 This Policy has been prepared by reference to the Freedom of Information Act 2000, other legislation and guidance as listed in Section 12 of this Policy.
- 1.2 Consultation was made with the then Information and Records Management Committee prior to publication of the original Policy. On the Committee, now the Information Governance Executive Group, are the Trust's Medical Director and Caldicott Guardian, senior consultants from a range of disciplines, the Senior Information Risk Owner, the Director of Systems & Network Services, the Head of Risk and Legal Services, Head of Patient Access and representation from a range of departments and directorates.
- 1.3 Additionally, consultation has been made with the following:
 - Human Resource Directorate and staff organisation representatives,
 - Purchasing.
- 1.3 The original Policy was agreed by the then Information Governance Committee and Executive Board. Subsequent versions will be similarly approved.

2 Review and Revision Arrangements

- 2.1 The date of the next scheduled review is given on the front cover sheet.
- 2.2 Persons or group responsible for review are:
 - Policy author and owner
 - Information Governance Group
- 2.3 The Healthcare Governance Directorate will notify the author of the policy of the need for its review six months before the date of expiry.
- 2.4 On reviewing this policy, all stakeholders identified in section 6 will be consulted as per the Trust's Stakeholder policy. Subsequent changes to this policy will be detailed on the version control sheet at the front of the policy and a new version number will be applied.
- 2.5 Subsequent reviews of this policy will continue to require the approval of the appropriate committee as determined by the Policy for Development and Management of Policies.

3 Dissemination and Implementation

3.1 Dissemination

Once approved, this policy will be brought to the attention of relevant staff as per the Policy for Development and Management of Policies, section 8 and Appendix 6 Plan for Dissemination.

This policy is available in alternative formats, such as Braille or large font, on request to the author of the policy.

3.2 Implementation

The Policy has been in operation since the introduction of general rights of access in January 2005. Implementation of any changes to Policy or process will be instigated by the Information Governance Lead. The impact of any such changes will likely be concentrated in the Information Governance Team, in collaboration with colleagues across the Trust who provide information towards FOI responses, and Directors who give their approval for release.

4 Document Control including Archiving

The register and archiving arrangements for policies will be managed by the Healthcare Governance Unit. To retrieve a former version of this policy the Healthcare Governance Unit should be contacted

5 Standards/Key Performance Indicators

Trust performance is assessed annually against NHS Information Governance Standards. The standard relating to FOI requires that:

- All staff are effectively informed of the need to support FOI requests.
- Procedures are reviewed regularly and there are additional procedures to assess performance in meeting statutory timeframes.

6 Training

Corporate and local induction procedures, along with mandatory IT training, will introduce new starters to the main provisions of this policy.

In accordance with Information Governance Data Security and Protection Toolkit requirements, IG refresher training is delivered to all staff using a variety of methods on an annual basis. The IG training needs of particular staff groups will be identified through an annual IG Training Needs Analysis, linked to the corporate TNA.

Appropriate training and support will be provided to those who have direct input to FOI responses.

7 Trust Associated Documentation

Information Governance Staff Guide - Freedom of Information
Records Management Policy
Data Protection and Privacy Impact Assessment Policy
Freedom of Information procedures (IG Team)

8 External References

The Freedom of Information Act 2000

The Data Protection Act 2018

The General Data Protection Regulation (EU) 2016/679 (GDPR)

Department of Health: Records Management Code of Practice

Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act 2000, issued under Section 45 of the Act, November 2002.

Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000, November 2002.

Information Commissioner's guidance at:

<http://www.ico.gov.uk/>

Department of Constitutional Affairs guidance at:

<http://www.dca.gov.uk/>

9 Monitoring Compliance and Effectiveness

See Table below.

Process for Monitoring Compliance and Effectiveness

Compliance with and effectiveness of the policy will be monitored as follows:

| Minimum requirement to be monitored | Process for monitoring | Responsible Individual/ committee/ group | Frequency of monitoring | Responsible individual/ committee/ group for review of results | Responsible individual/ committee/ group for developing an action plan | Responsible individual/ committee/ group for monitoring of action plan |
|---|---|--|-------------------------|--|--|--|
| a. The Trust has publicly available, documented and implemented procedures for FOI Act compliance. | Review against Data Security and Protection Toolkit standards | IG Lead | Annual | IG Officer | IG Lead | IG Executive Group |
| b. All staff are effectively informed of the need to support FOI requests. | Staff survey | IG Lead | Annual | IG Officer | IG Lead | IG Executive Group |
| | Exception monitoring | IG Team | Continual | IG Officer | IG Lead | IG Executive Group |
| c. Procedures are reviewed regularly and there are additional procedures to assess performance in meeting statutory timeframes. | Review for currency against IG Toolkit standards | IG Lead | Annual | IG Officer | IG Lead | IG Executive Group |
| | Weekly progress meetings | IG Team | Weekly | IG Officer | IG Lead | IG Lead |
| | Performance report to IG Executive Group | IG Lead | Annual | IG Officer | IG Lead | IG Executive Group |

Appendix 5: Plan for dissemination of policy

| | |
|--|--|
| Title of document: | Freedom of Information Policy |
| Date finalised: | January 2019 |
| Previous document in use? | Yes |
| Dissemination lead | Fiona Jamieson |
| Which Strategy does it relate to? | Information Governance Strategy |
| If yes, in what format and where? | Document held by Healthcare Governance Directorate |
| Proposed action to retrieve out of date copies of the document: | Healthcare Governance Directorate will hold archive |

Dissemination Grid

| | | |
|--|-----------------------|-----------|
| To be disseminated to: | 1) All Staff | 2) |
| Method of dissemination | Staff Briefing | |
| who will do it? | IG Team | |
| and when? | Next available | |
| Format (i.e. paper or electronic) | Electronic | |

Dissemination Record

| | |
|--|-------------------------------------|
| Date put on register / library | Tbc on approval |
| Review date | January 2022 |
| Disseminated to | All via Staff Room |
| Format (i.e. paper or electronic) | Electronic |
| Date Disseminated | |
| No. of Copies Sent | N/A |
| Contact Details / Comments | Fiona.c.jamieson@york.nhs.uk |