

FREEDOM OF INFORMATION POLICY

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AUTHOR:	Legal Services Manager
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POLICY SUMMARY

This policy and its associated procedures will ensure the Trust meets its obligations under the Freedom of Information Act 2000 (including Environmental Information Regulations). Failure to implement this policy will place the Trust in breach of the Act.

The policy and associated procedures set out clear guidance to all staff that ensures systems are in place to minimise all risks associated with sharing information.

The Trust monitors the implementation of and compliance with this policy in the following ways;

This policy will be monitored for compliance bi-monthly and the results will be presented to the appropriate committee for approval.

Services	Applicable	Comments
Trustwide	✓	
Essex MH&LD		
CHS		

**The Director responsible for monitoring and reviewing this policy is
Chief Executive Officer**

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

Freedom of Information Policy

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

FREEDOM OF INFORMATION POLICY

Assurance Statement

1.0 INTRODUCTION

- 1.1 This document is the policy of Essex Partnership University NHS Foundation Trust (the “Trust”) for handling requests under the Freedom of Information Act 2000 (the “Act”) and the Environmental Information Regulations 2004 (the “EIR”).
- 1.2 The Freedom of Information Act 2000 is part of the Government’s commitment to greater openness in the public sector, a commitment supported by the Trust. It is a legal requirement that the Trust, along with other public authorities, must comply with. This policy will enable staff and members of the public to understand how the Freedom of Information Act is managed in the Trust.
- 1.3 The main features of the Act are:
- a) a general right of access from 1 January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions;
 - b) a duty on public authorities to inform the applicant whether they hold the information requested, and communicate the information to him or her, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure;
 - c) exemptions in the Act specify the circumstances in which the Trust may consider whether information should be withheld. Many of the exemptions will be subject to a “public interest” test, which the Trust will have to apply before reaching a decision.
 - d) a duty on every public authority to adopt, maintain and review a Publication Scheme;
 - e) an Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and an Information Tribunal;
 - f) a duty on the Lord Chancellor (Department for Constitutional Affairs) to promote Codes of Practice for guidance on specific issues.
 - g) under the Environmental Information Regulations there are separate rights of access to information about the environment.
 - h) a defined interface with the Data Protection Act that maintains the privacy of personal data.

- 1.4 The Information Commissioner has said that the following public interest factors, though not exhaustive, would encourage the disclosure of information:
- furthering the understanding of and participation in the public debate of issues of the day.
 - promoting accountability and transparency by public authorities for decisions taken by them.
 - promoting accountability and transparency in the spending of public money.
 - allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions.
 - bringing to light information affecting public health and public safety.
- 1.5 There may be legal consequences and penalties for the Trust and individual staff members if the Act is not followed. The Trust has produced this policy to protect itself and staff from such penalties.
- 1.6 The Lord Chancellor says “The Freedom of Information Act entitles individuals to have access to information and not to documents”, though sometimes the production of a document is the best way of dealing with the request for information. However, ‘information held’ includes anything written on paper, faxes, email and electronic recordings (including all portable devices).
- 1.7 Where information requested by the applicant is environmental information, the information request must be dealt with under the EIR.
- 1.8 Any requests for information under the EIR will be subject to the same procedures as FOI requests. The key difference is that EIR information can be requested verbally as well as in writing. It is recognised that EIR requests are less common than those under FOI and appropriate professional advice will be sought to ensure proper handling of these, where necessary. A summary of the EIR and the exemptions contained therein can be found in Appendix 1.
- 1.9 This policy will aim to ensure timely access to information held by the Trust in order to promote greater openness / transparency of decision making. This will be balanced against the need to ensure confidentiality in areas such as personal privacy, commercial sensitivity and where disclosure would not be in the public interest.

2.0 DUTIES

- 2.1 This Policy applies to everyone in the Trust workforce. Staff could be subject to action under the Trust’s Disciplinary Procedure (HRPG27A) if this policy is not adhered to.
- 2.2 This policy applies to all information that the Trust holds however it was created / received, in whatever media it is formatted / stored and whether paper or electronic. This will include, for example, documents / reports; emails; minutes; correspondence; plans and business cases, etc.

2.3 The Act does not apply to private bodies; however private companies undertaking work on behalf of a public body are subject to the Act for that part of their business. See also Section 4.14.

2.4 Information is made available by the Trust to stakeholders every day. It would be impractical and overly bureaucratic to attempt to record this activity for FOI purposes, however, all **written** (including email) requests for information should be treated as FOI requests, so the FOI procedure must be followed. If you are in doubt at any stage about how you should deal with any information request, contact the Legal Department for help. The FOI, Team can be contacted at epunft.foi@nhs.net.

2.5 The Trust has a Records Management Policy, based on Department of Health guidance, which sets out what information, needs to be retained for what periods of time and how to dispose of information when that time has expired, including FOI information . Staff will follow Trust rules on storing information (physically and electronically) so that it can be retrieved. Any staff member who destroys any information after it has been requested under the Act may be committing a criminal offence under section 77 of the Act.

2.6 **Corporate Responsibilities –**

The Trust is required, by law, to respond to FOI and EIR requests within 20 working days of a request being received in written form (including be email). Failure to comply with an FOI or EIR request is treated as a serious matter and is liable to investigation by the Information Commissioner. Such complaints are dealt with by the Information Commissioner as a matter of priority and may often lead to a full-scale investigation into an organisation's procedures and practices.

2.7 **Directors with Specific Responsibilities –**

The Chief Executive Officer is the person responsible for the Freedom of Information Act, for ensuring compliance with the Act and for bringing any FOI issues requiring Trust Board consideration to their attention.

The Trust's 'Caldicott Guardian' (Executive Medical Director) shall ensure the protection of patient confidentiality throughout the organisation. Personal data is exempt from FOI.

2.8 **Legal Services Manager/FOI Lead**

The Legal Services Manager supported by the FOI/DPA Lead will oversee the systems and procedures that support the implementation of this policy.

2.9 Legal Services Department

The Legal Services Department are responsible for providing advice and assistance to members of the public who propose to make or have made requests for information.

2.10 All Staff

All employees of the Trust are obliged to adhere to the policy. Staff must ensure they forward requests for information to the Legal Services Department within 10 working days to ensure compliance with the timescales laid down within the Act for responses and must not respond directly to requests for corporate information.

All staff are required to assist/respond to the Legal Services Department if asked for information in respect of an FOI request. Failure to assist or respond, within the set timescales, may result in the Trust failing to comply with the Act and will be escalated to the relevant Director/Executive Director.

3.0 DEFINITIONS

- 3.1 **Publication Scheme** – is a “live” document, detailing the types of information that the ICO expects public authorities to regularly publish or have an intention to publish in the future. All public authorities are required to produce and maintain a Publication Scheme. It details the format in which the information is available.
- 3.2 **Exemption** – is defined as “a reason why certain information can be legitimately withheld from disclosure under the terms of the Act.”
- 3.3 **Public Interest Roles** - those staff occupying positions of seniority with public profiles and responsibilities for major (policy) decisions and expenditure of public funds, the Trust deems these to be senior managers of Band 8 and above. These staff should expect that their details (names and contacts) are already in the public domain and will be shared under FOI. For all other staff consent will be sought and guidance provided by the Legal Services Department.

4.0 PRINCIPLES

4.1 General Rights of Access, Reviews, Appeals

Section 1 of the Act gives a general right of access from 1 January 2005 to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act.

- 4.2 The Trust will ensure that systems and procedures are in place to meet the duty to provide advice and assistance to persons who propose to make, or have made, requests for information. All requests for assistance should be directed to the Legal Services Department.

- 4.3 These provisions are fully retrospective. The Trust will ensure that procedures and systems are in place to facilitate access by the public to recorded information from 1 January 2005.
- 4.4 When applying the public interest test (to qualified exemptions) the Trust will have regard to the Information Commissioner's Awareness Guidance.
- 4.5 The Trust will implement a procedure for dealing with complaints about the discharge of its duties under the Act. Should a requestor disagree with a decision and or the information provided, the Trust will review its decisions. If the requestor remains dissatisfied the Trust will refer applicants to Section 50 of the Act to apply to the Information Commissioner for resolution. The Information Commissioner will only review those complaints where local resolution has already been attempted.
- 4.6 The Trust can, according to the Act, be asked for the details (e.g. name, email address or telephone number) in respect of staff who undertake a public interest role as defined in Section 3 above.

4.7 **Exemptions**

The Policy supports the principle that openness and not secrecy should be the norm in public life. However, the Trust will use the exemptions in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure. (The exemptions are listed in the Freedom of Information Procedure).

- 4.8 To alter, deface, block, erase, destroy or conceal any records held by the public authority is a criminal offence. The Trust therefore has to act on these requests and supply the information or apply an exemption.
- 4.9 The Freedom of Information Act does not change patients' / employees' rights to confidentiality in accordance with Article 8 of the Human Rights Convention, the Data Protection Act and in common law.
- 4.10 Under Section 7 of the Data Protection Act individuals are entitled to see their own clinical / personnel records, or any other personal information that the Trust holds about them. All requests for personal information are classified as Subject Access Requests and as such are processed under the Data Protection Act 2018 and exempt under FOI (Section 40).

4.11 **Consultation with third parties**

The Trust recognises that in some cases the disclosure of information may affect the legal rights of a third party. Unless an exemption provided for in the Act applies, the Trust will be obliged to disclose that information in response to a request.

- 4.12 Where a disclosure of information cannot be made without the consent of a third party, the Trust will consult that third party unless such a consultation is not practicable.

4.13 Training will be provided to all staff within mandatory training programmes with additional awareness material being issued via the normal Trust communication channels.

4.14 **Email**

The Trust has an email policy which sets out the Trust's rules.

4.15 The Trust has procedures for the good order and maintenance of the electronic network, especially where there are capacity constraints, and staff will comply with requests from the Director of IT&T about the management of electronic records.

4.16 **Public Sector Contracts**

When entering into contracts the Trust will refuse to include contractual terms which restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act.

4.17 The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature.

4.18 It is for the Trust to determine whether to disclose information and not the non-public authority contractor.

4.19 **Re-Use of Public Sector Information**

From 1 July 2005 a new European Directive came into force which allows applicants to apply to re-use information held by the Public Sector.

4.20 'Re-use' means using information for a purpose other than the purpose for which the document was originally produced.

4.21 The new directive does not provide access to the information itself. This is available either through the Freedom of Information Act, Data Protection Act or other access to information regimes such as the Environmental Information Regulations.

4.22 For further information please refer to the Re-use of Public Sector Information Regulations 2005 Procedure.

4.23 **Publication Scheme**

The Trust has adopted the Information Commissioners Office model Publication Scheme for NHS Trusts. The scheme promotes the proactive and regular publication of information by the Trust.

4.24 The Trust's Publication Scheme details the information that the Trust publishes 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 content will be reviewed regularly by the Trust and may be subject to review by the Information Commissioner.

- 4.25 The Scheme lists seven classes of information and many items listed will be available from the website www.eput.nhs.uk.
- 4.26 The publication scheme acts as an index to information and is ordered logically into classes of information. These classes relate to areas of activity or departments within the Trust.
- 4.27 Directors will nominate key staff from their service areas to be responsible for uploading and updating information to the Trust's Publication Scheme.

5.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

- 5.1 This policy will be reviewed a minimum of 3 yearly or as new best practice guidance / legislation is published.
- 5.2 This policy will be monitored for compliance a minimum of 3 yearly and the results will be presented to the appropriate committee for approval.
- 5.3 Adherence to this policy and the relevant permitted timescales will be reviewed for compliance quarterly and the results will be presented to the Information Governance Steering Sub-Committee for approval.

6.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION

Department of Health Records Management, NHS Code of Practice Part 2, 2nd Edition 2009 Version

Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I 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.

The Information Commissioner's Freedom of Information Guidelines

7.0 REFERENCE TO OTHER TRUST POLICIES/PROCEDURES

Freedom of Information Act 2000 Procedure
Records Management Strategy
Records Management Policy and Procedure
Email Procedure
Publication Scheme

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