

## FREEDOM OF INFORMATION PROCEDURE

<b>PROCEDURE REFERENCE NUMBER:</b>	CPG25
<b>VERSION NUMBER:</b>	2
<b>KEY CHANGES FROM PREVIOUS VERSION</b>	Various, 3 year review
<b>AUTHOR:</b>	Legal Services Manager
<b>CONSULTATION GROUPS:</b>	Information Governance Steering Sub-Committee Quality Committee
<b>IMPLEMENTATION DATE:</b>	1 <sup>st</sup> July 2017
<b>AMENDMENT DATE(S):</b>	January 2019 – GDPR; September 2020
<b>LAST REVIEW DATE:</b>	November 2020
<b>NEXT REVIEW DATE:</b>	November 2023
<b>APPROVAL BY INFORMATION GOVERNANCE STEERING SUB-COMMITTEE:</b>	October 2020
<b>RATIFICATION BY QUALITY COMMITTEE:</b>	November 2020
<b>COPYRIGHT</b>	© Essex Partnership University NHS Foundation Trust 2017. All rights reserved. Not to be reproduced in whole or part without the permission of the copyright owner

### PROCEDURE SUMMARY

The Freedom of Information procedures and its associated policy will ensure the South Essex Partnership University NHS Foundation Trust (the “Trust”) meets its obligations under the Freedom of Information Act 2000 (the “Act”) (including Environmental Information Regulations). Failure to implement this procedure will place the Trust in breach of the Act.

These 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 procedure in the following ways:**

This policy will be monitored for compliance quarterly and the results will be presented to the Information Governance Steering Sub-Committee for approval.

Services	Applicable	Comments
Trustwide	✓	
Essex MH&LD		
CHS		

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

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**FREEDOM OF INFORMATION PROCEDURE**

**CONTENTS**

THIS IS AN INTERACTIVE CONTENTS LIST – PLEASE CLICK ON THE SECTION HEADINGS TO GO TO THE SECTIONS

- 1.0 INTRODUCTION**
- 2.0 SCOPE**
- 3.0 DUTY TO PROVIDE ADVICE AND ASSISTANCE**
- 4.0 PUBLICATION SCHEME AND GENERAL RIGHTS OF ACCESS**
- 5.0 PROCEDURE FOR DEALING WITH THE INITIAL APPLICATION FOR INFORMATION THROUGH THE PUBLICATION SCHEME**
- 6.0 PROCEDURE FOR DEALING WITH THE INITIAL APPLICATION FOR INFORMATION THROUGH THE GENERAL RIGHTS OF ACCESS**
- 7.0 PROCEDURE FOR PROCESSING REQUESTS FOR INFORMATION BY THE LEGAL SERVICES DEPARTMENT / FOI TEAM**
- 8.0 PROCEDURE FOR REFUSAL OF REQUESTS**
- 9.0 PRESS QUERIES/ NEWSWORTHY/POTENTIAL GENERAL PUBLIC INTEREST**
- 10.0 'NEITHER CONFIRM NOR DENY'**
- 11.0 EXEMPTIONS (*ABSOLUTE AND QUALIFIED EXEMPTIONS*)**
- 12.0 ADVICE AND ASSISTANCE TO APPLICANTS**
- 13.0 VEXATIOUS OR REPEATED REQUESTS**
- 14.0 CONSULTATION ABOUT RELEASE OF INFORMATION**
- 15.0 CHARGES AND FEES**
- 16.0 RE-USE OF PUBLIC SECTOR INFORMATION**
- 17.0 COMPLAINTS AND FEEDBACK**
- 18.0 COMPLIANCE AUDIT**

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**FREEDOM OF INFORMATION PROCEDURE**

**Assurance Statement**

**1.0 INTRODUCTION**

1.1 The aim of this procedure is to:

- facilitate the disclosure of information under the Freedom of Information Act by setting out good practice that the Trust will follow when handling requests for information;
- set out standards for the provision of advice to applicants and to encourage the development of effective means of complaining about decisions taken under the Act;
- ensure that the interests of third parties who may be affected by any decision to disclose information are considered by the Trust by setting standards for consultation;

1.2 The Legal Services Department are responsible for ensuring that the Trust maintains compliance with the Act, and can be contacted via [epunft.foi@nhs.net](mailto:epunft.foi@nhs.net) or by telephone 0300 123 0808.

**2.0 SCOPE**

2.1 All staff must be aware of and adhere to these procedures which apply to all individuals engaged in the discharge of the duties of this Trust.

2.2 It is not appropriate to refer issues to the Legal Services Department (see section 7) where staff:

- provide information leaflets and other reference material that has already been approved for use by the Trust. This would also include media available on the Trust's website via the Publication Scheme at [www.eput.nhs.uk](http://www.eput.nhs.uk).
- discuss an information leaflet or other material with another individual, helping them decide on their options and signposting them to a more appropriate source of help.
- provide information on the current care and treatment of an individual using established practice – for example, sharing care plans with the service users.

2.3 All written requests, including e-mails, for corporate information should be treated as FOI requests, and this procedure applies. If you are in doubt at any stage about how you should deal with any information request, contact the Legal Services Department for help.

### **3.0 DUTY TO PROVIDE ADVICE AND ASSISTANCE**

- 3.1 The Trust is under a duty to provide advice and assistance to applicants.
- 3.2 The Legal Services Department will be responsible for the discharge of this duty in respect of this Trust.
- 3.3 If the Legal Services Department believes that some or all of the information requested is held by another public authority, they will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:
- contacting the applicant and informing him or her that the information requested may be held by another public authority;
  - suggesting that the applicant re-applies to the authority which the Trust believes to hold the information;
  - providing him or her with contact details for that authority.

### **4.0 PUBLICATION SCHEME AND GENERAL RIGHT OF ACCESS**

- 4.1 Requests for information under the Act will arise from two main sources: through the Trust's Publication Scheme or through the general right of access to recorded information.
- 4.2 Under Section 19 of the Act, the Trust has a legal duty to adopt and maintain a Publication Scheme for the publication of Trust information. The Trust has adopted a model Publication Scheme for NHS Trusts. The Information Commissioner will formally review the Model Publication Scheme at regular intervals.
- 4.3 The Trust will publish as much information about its activities as it is reasonably practical to publish so that members of the public do not have to make a formal request for access to information under the Act.
- 4.4 Directors will nominate key staff from their service areas to be responsible for uploading and updating information to the Trusts Publication Scheme.
- 4.5 Applications for information listed in the Publication Scheme may be received verbally or in writing by any department in the Trust. These requests should be forwarded to the Legal Services Department. Any requests for information, which have been published, will be responded to promptly and in accordance with the Act.
- 4.6 The general rights of access to recorded information by individual applicants came into force on 1 January 2005. All requests must be made in writing. These requests will cover information that is not listed in the Publication Scheme. All such requests must be passed to the Trust's Legal Services Department.

## **5.0 PROCEDURE FOR DEALING WITH APPLICATION FOR INFORMATION THROUGH THE PUBLICATION SCHEME**

- 5.1 The Publication Scheme directs all applicants who require assistance in obtaining information from the Trust to the Legal Services Department.
- 5.2 All requests for information arising from the Publication Scheme must be referred to the Legal Services Department within one working day of their receipt. These requests may be written or verbal.

## **6.0 PROCEDURE FOR DEALING WITH APPLICATION FOR INFORMATION UNDER THE GENERAL RIGHT OF ACCESS**

- 6.1 Applications under the general right of access to recorded information will apply to information not listed in the Publication Scheme. These requests may be retrospective: that is all information held by the Trust, regardless of limit of time.
- 6.2 Applications must be received in writing (includes email). If received outside of the Legal Services Department they must be re-directed to the Legal Services Department within one working day. The application should have been made in the form of a letter / email and the original documentation should be scanned and/or emailed on the day of receipt and the original letter should also be posted to the Legal Services Department. Verbal requests / queries should be re-directed to the Legal Services Department who will advise applicants on the correct process.
- 6.3 Whilst the Act requires applicants to put their request in writing, the Trust has a duty to provide assistance where writing would be difficult, for example due to a disability or where English is not their first language.
- 6.4 The Act stipulates that the process should be 'applicant blind' meaning that all personal details relating to the requester should be removed before processing to ensure the protected identity of the applicant.

## **7.0 PROCEDURE FOR PROCESSING REQUESTS FOR INFORMATION BY THE LEGAL SERVICES DEPARTMENT/FOI TEAM**

### **7.1 *Stage one – Processing Requests***

- 7.1.1 Once the Legal Services Department receives an applicant's request for information they will send a letter/email of acknowledgement within three working days to inform the applicant that their request has been received and will be processed within twenty working days.
- 7.1.2 If the Legal Services Department believes that any of the information requested is exempt from disclosure the issue will be addressed by the Legal Services Department during the processing of the application and in liaison with the relevant service area/s supplying the data.

7.1.3 Staff collating information to respond to FOI application/s who believe a formal exemption applies will liaise with the Legal Services Department to ensure correct exemptions are applied and to agree the final response to an applicant.

7.1.4 The Trust is entitled to request further clarification from the applicant. At this point the 'clock' stops and the request is put on hold until the clarification is received. Once the additional information is received the 'clock' restarts at the same point at which it was put on hold. If clarification is not received within 28 calendar days the whole request is considered to have lapsed and will be closed by the Legal Services Department. It is not acceptable to use clarification seeking as a means to delay the processing of requests, therefore the relevant services areas/teams receiving FOI requests must review and raise any points of clarity with the Legal Services Department within 48 hours of receipt.

## 7.2 **Stage Two - Accessing the Information**

7.2.1 The Legal Services Department will identify who holds the information that the applicant has requested. The Legal Services Department will identify and contact the person(s) in the Trust who are most appropriately placed to meet the requirements of the applicant. The appropriate Service Director will also be notified of the impending request.

7.2.2 The Trust does not charge for FOI requests as normal practice however, an initial assessment regarding the estimated cost of compliance, as set by the statutory Fees Regulations; will be made by the person(s) within the Trust who have been identified as being most appropriately placed to collate the requested information and where necessary the applicant will be notified in writing by the Legal Services Department where the estimated cost of compliance exceeds to statutory Fees Regulations. If it is determined that the collation of the requested information cannot be provided within the statutory Fees Regulations, the appropriate services/teams will provide the Legal Services Department with evidence of the below:

- How long it will take to locate and provide the information?

The Legal Services Department will advise the applicant of this.

7.2.3 Trust staff will have ten working days to locate and provide the information requested to the Legal Services Department. If it is not possible to meet this deadline, the Legal Services Department must be informed immediately. Upon agreement additional working days may then be allowed to comply with the initial request.

7.2.4 The drafted information must be validated by the relevant teams and be forwarded to the Legal Services Department in the format of a final response on the Trust FOI template provided.

### 7.3 **Stage Three - Providing the Information**

- 7.3.1 If no fees or charges are either payable or outstanding, and once any relevant exemptions have been applied the Legal Services Department will submit the final draft response to the relevant Executive Director/Director for approval allowing up to five working days for the approved response to the applicant before the expiry of the 20 working day rule.
- 7.3.2 Information will be provided to applicants by any one or more of the following means, namely:
- (a) as a copy of the information in permanent form or another form acceptable to the applicant.
  - (b) through the provision of a reasonable opportunity to inspect a record containing the information.
  - (c) the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

## **8.0 PROCEDURE FOR REFUSAL OF REQUESTS**

- 8.1 A request for information may be refused if:
- (a) the information is exempt from disclosure under Part II of the Act.
  - (b) a fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant/the applicant was notified of the charge.
  - (c) the cost of compliance exceeds the appropriate limit.
  - (d) the request is demonstrably vexatious or repeated.
- 8.2 If a request for information is refused under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. The applicant will also be informed of the Trust's complaints procedures and of their right to complain to the Information Commissioner.
- 8.3 If the Legal Services Department anticipates that it will take more than twenty working days to reach a decision when applying a public interest test they will provide to the applicant an estimate of the date by which they expect that a decision will have been reached.
- 8.4 If a 'qualified' exemption is being applied the Legal Services Department will agree this with the relevant Executive Director as part of the approval process, stating the reasons for claiming:
- (a) 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
  - (b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 8.5 If the Executive Director believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit (£450 equating to 18 hours work) or the request is demonstrably repeated or vexatious, the notice will state that fact.

## **9.0 PRESS QUERIES/NEWSWORTHY/POTENTIAL GENERAL PUBLIC INTEREST**

- 9.1 It is appreciated that information supplied to the Press has wide implications and therefore the outcome of any application from the Press, albeit they must still follow the Act process, will be shared with the Trust's Communications Department by the Legal Services Department.
- 9.2 Some information which is sought may potentially be newsworthy. As stated in 12.0 of this document and the Legal Services Department will liaise with the Communications Department to decide whether any request received could be a potentially newsworthy request or if any requests have potential to cause embarrassment to the Trust. If this is the case the Media Handling Process will be invoked by the Communications Team to run concurrently with the Act process.

## **10.0 NEITHER CONFIRM NOR DENY**

- 10.1 The majority of exemptions have the ability to 'neither confirm nor deny' where either confirming or denying that information is held would itself give out information. An example of this is where a request has been received asking for specific information relating to an individual. The 'usual' response would be to state that this information is exempt under section 40 of the Freedom of Information Act as it relates to personal information. That information can be requested through the Data Protection Act route.
- 10.2 Such a response although technically correct will have already confirmed that we hold information about that person and therefore that they are a service user / staff member which itself has other implications. In this situation the correct response would be to neither confirm nor deny. To confirm information such as that a person is a service user is to break their confidentiality and therefore breach the Data Protection Act 2018 regardless of whom the requester was. This is especially important when the request is from the Press as the desire to correct their 'factual inaccuracies' may tempt a breach.

## 11.0 EXEMPTIONS

### 11.1 *Absolute exemptions.*

11.1.1 These are cases where the right to know is wholly dis-applied. In some cases there is no legal right of access at all, for instance information supplied by or relating to bodies dealing with security matters or information covered by parliamentary privilege. In other cases, for instance, information available to the applicant by other means or personal information relating to the applicant. It may be possible to obtain the information by alternative means rather than under the FOIA. Examples may include:

- Information accessible by other means (s.21)
- Information supplied by or relating to, bodies dealing with security matters (s.23)
- Court records (s.32)
- Parliamentary privilege (s.34)
- Personal information (s.40)
- Information provided in confidence (s.41)
- Information whose disclosure is prohibited by law (s.44)

### 11.2 *Qualified exemptions.*

11.2.1 These are cases where a public authority, having identified a possible exemption, must consider whether the public interest in maintaining the exemption is greater than that in confirming or denying the existence of the information requested and providing the information to the applicant. Examples may include:

- Information intended for future publication (s.22)
- National security (s.24) (This exemption should be read in conjunction with s.23 – “information supplied by, or relating to, bodies dealing with security matters”)
- Defence (s.26)
- International relations (s.27)
- Relations within the UK (s.28)
- The economy (s.29)
- Investigations and proceedings (s.30)
- Law enforcement (s.31)
- Audit functions (s.33)
- Formulation of government policy (s.35)
- Prejudice to effective conduct of public affairs (s.36)
- Communications with her Majesty (s.37)
- Health and safety (s.38)
- Some personal information (s.40).
- Legal professional privilege (s.42)
- Commercial interests (s.43)

11.2.2 The majority of exemptions have the ability to 'neither confirm nor deny' (see 13.1 and 13.2 above).

11.2.3 An example of this is where a request has been received asking for specific information relating to an individual. The 'usual' response would be to state that this information is exempt under section 40 of the Freedom of information Act as it relates to personal information. That information would have to be requested through the Data Protection Act route.

## **12.0 ADVICE AND ASSISTANCE TO APPLICANTS**

- 12.1 The Legal Services Department will provide advice and assistance to applicants for information under the Act.
- 12.2 The Legal Services Department will also act as a source of advice and support for Trust staff in regard to the Act.
- 12.3 Where a potential applicant is unable to frame their request in writing, the Legal Services Department will take reasonable steps to ensure that appropriate assistance is given.
- 12.4 Once the Legal Services Department have provided such assistance, and the applicant still fails to describe the information requested in a way which would enable the Trust to identify and locate it, the Legal Services Department will seek further clarification. The Legal Services Department will disclose any information relating to the application which has been successfully identified and found for which the Trust does not wish to claim an exemption. The Legal Services Department will explain to the applicant why the Trust cannot take the request any further and provide details of the complaints procedure.
- 12.5 The twenty working day time limit is not activated until the applicant has provided sufficient information for the Trust to supply them with the information they require. If applicants have not responded to requests for clarification within 28 days (calendar) the original request will be deemed as lapsed and the whole application will be closed.
- 12.6 The Trust is not obliged to comply with a request for information because, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold). In such circumstances, the Trust has three options:
- (a) to refuse the request on the basis that it exceeds the cost threshold;
  - (b) to charge, under section 13 of the Act, for the provision of the information;
  - (c) to seek a means by which information could be provided within the cost ceiling.

**13.0 VEXATIOUS OR REPEATED REQUESTS**

- 13.1 The Legal Services Department will not provide assistance to applicants whose requests are vexatious or repeated, as defined by section 14 of the Act.
- 13.2 In such circumstances, the Legal Services Department should be able to demonstrate that the applicant's request is vexatious or repeated based upon the monitoring data that has been collected.
- 13.3 In the case of vexatious requests the Legal Services Department will seek professional legal advice prior to writing to an applicant.
- 13.4 The Trust may receive a number of related requests that, under section 12(1) and regulations under section 12(4), take the cumulative cost of compliance over the "appropriate limit" as prescribed in Fees Regulations.

**14.0 CONSULTATION ABOUT RELEASE OF INFORMATION**

- 14.1 Staff who occupy positions of seniority (Band 8 and above) with public profiles and responsibilities for major (policy) decisions and expenditure of public funds should expect that their details (names and contacts), which are already in the public domain will be shared under FOI and may not be considered personal information.
- 14.2 For all other staff, if managers are asked to provide details either the data will be exempt under Section 40 (Personal Information) or staff must be advised about the request and given the opportunity to object if there are any circumstances which may affect the release of such information.
- 14.3 In some cases the disclosure may affect the legal rights of a third party. Unless an exemption provided for in the Act applies in relation to any particular information, the Trust is obliged to disclose that information in response to a request.
- 14.4 In some cases disclosure of information cannot be made without the consent of a third party. In such cases the Legal Services Department will consult the third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.
- 14.5 Where the interests of the third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.
- 14.6 The Legal Services Department may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, they will consider what is the most reasonable course of action to take in light of the requirements of the Act and the individual circumstances of the request.

- 14.7 Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation, the Legal Services Department will, if they consider consultation appropriate, consider that it would be sufficient to consult that representative organisation. For example, a consultation may take place with the Staffside Representatives in regard to the views of the Trust's workforce.
- 14.8 The fact that a third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act.
- 14.9 In all cases, it is for the Trust, through the Executive Director not the third party to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

## **15.0 CHARGES AND FEES**

- 15.1 The Trust does not charge for FOI applications as a general rule and therefore most information will be available for free. The Trust may choose to charge for lengthy hard copies or copying onto media (e.g. Disk). The charges will vary according to the format requested.
- 15.2 Information that is available from the Trust's website will be free of charge, although any charges for Internet Service provider and personal printing costs would have to be met by the individual. For those without Internet access, a single print-out of the information as on the website will be available by post or personal application to the Legal Services Department.
- 15.3 Leaflets and brochures produced by the Trust will be provided free of charge.
- 15.4 Any information that can be transmitted by e-mail will be provided free of charge, unless otherwise stated.
- 15.5 The Trust may levy a fee in accordance with Fees Regulations made under the Act in respect of requests made under the general right of access.
- 15.6 If a Fees Notice has been issued to an applicant, or they have been informed of a charge for information listed in the Publication Scheme, the 'clock stops' in regard to compliance with the twenty working day timescale.
- 15.7 Once an applicant has paid their fees or charges, the 'clock' starts from the point within the twenty working days that it 'stopped'. The applicant will then be provided with the information they requested.
- 15.8 Applicants will have three months beginning on the day on which they were given the fees notice/notified of the charge to pay the fee/charge.

**16.0 RE-USE OF PUBLIC SECTOR INFORMATION**

- 16.1 All requests from applicants for the re-use of information must be submitted in writing, which includes e-mail, but excludes text messages.
- 16.2 Applicants should provide the following information:
- their name and address
  - specify which documents they want to re-use
  - state the purpose for which the document is to be re-used
- 16.3 All applications should be forwarded to the Legal Services Department – epunft.foi@nhs.net, telephone 0300 123 0808, upon receipt, the Legal Services Department will advise the Executive Director within 20 working days following the date of receipt of the request, of the appropriate response, including:
- refusing to give permission to re-use, or;
  - supply the document to the applicant, or;
  - offering terms and conditions for re-use, possibly in the form of a licence
- 16.4 For further advice and assistance, please contact the Legal Services Department at epunft.foi@nhs.net or telephone 0300 123 0808.

**17.0 COMPLAINTS AND FEEDBACK**

- 17.1 Comments and feedback about the discharge of the duties of the Trust in regard to the FOI Act and Re-use of Public Sector Information will be forwarded to the Legal Services Department.
- 17.2 All complaints, verbal or written (including emails), must be referred in the first instance to the Legal Services Department who will liaise with the Executive Director who shall appoint a senior manager to look into the complaint and try to seek front line resolution of the issue via an appeals process (local resolution).
- 17.3 The Legal Services Department, with the approval of the Senior Information Risk Owner will respond to the complainant either upholding the Trust decision or amending it.
- 17.4 Complainants who remain dissatisfied with the Trust at the end of the Local Resolution Stage will be advised to take their complaint to the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

**18.0 COMPLIANCE AUDIT**

- 18.1 The Freedom of Information Procedure has been risk rated as a high risk procedure due to the legislative requirements and the Information Governance Toolkit requirements, and will be audited / monitored annually.
- 18.2 The Legal Services Manager / FOI Lead has been nominated as audit lead for the Freedom of Information policies / procedures.
- 18.3 The Audit lead will be responsible, in conjunction with the Compliance Team for:
- Completing the Audit Form (including designing methodology and the audit questions and reviewing existing monitoring arrangements)
  - Undertaking the Audit
  - Analysing findings
  - Developing and monitoring subsequent action plans
  - Reporting compliance with the Act to the Information Governance Steering Sub-Committee on a regular basis

**END**