

## FREEDOM OF INFORMATION POLICY

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<b>VERSION NUMBER:</b>	2
<b>KEY CHANGES FROM PREVIOUS VERSION</b>	Various changes – 3 year review
<b>AUTHOR:</b>	Phil Stevens - Risk and Legal Services Manager
<b>CONSULTATION GROUPS:</b>	Information Governance Steering Sub-Committee Quality Committee
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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](mailto: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 by 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](http://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, 2<sup>nd</sup> 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

**END**

## 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>	Phil Stevens - Risk and Legal Services Manager
<b>CONSULTATION GROUPS:</b>	Information Governance Steering Sub-Committee Quality Committee
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### 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**

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**FREEDOM OF INFORMATION PROCEDURE**

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**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.

<b>11.0 EXEMPTIONS</b>
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**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](mailto: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](mailto: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**

## Summary of the Environmental Information Regulations 2004

An EIR request may be made verbally as well as in writing and will be a request for environmental information if it is information in written, visual, aural, electronic or any other material form on:-

- (a)** the state of the elements of the environment – e.g. air, atmosphere, water, soil, land, landscape and natural sites such as wetlands, coastal and marine areas, biological diversity and the interaction of these elements;
- (b)** factors affecting (or likely to affect) the environment – including energy, noise, radiation, waste, emissions, discharges and other releases into the environment;
- (c)** measures – such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to above;
- (d)** reports – on the implementation of environmental legislation;
- (e)** economic analyses – including cost benefit and other economic analyses and assumptions used within the framework of measures and activities referred to in (c); and
- (f)** the state of human health and safety – including the contamination of the food chain, conditions of human life, cultural sites and built structures insofar as they are or may be affected by the state of the elements of the environment referred to in (a) or through those elements by any of the matters referred to in (b) or (c).

Under the EIR, information is held by the public authority if it has been produced or received by it, is held by another person on its behalf or which the public authority holds on behalf of a third party.

The EIR places various rights and duties on public authorities which include:

- A duty to actively disseminate environmental information;
- A duty to make information available on request. Information requests must be answered within 20 working days, unless the public authority reasonably believes that it is impracticable to answer the request in that timescale due to its complexity and volume, in which event the public authority may have 40 days in which to provide the information. There is no further extension of time allowed for consideration of the public interest test;
- A duty to provide advice and assistance to applicants;
- A right to charge for information provided. Under the EIR, there is no cost limit beyond which information requests need not be answered. There is also no provision dealing with the level of fees or charges. The EIR states that a



charge may not exceed “an amount which the public authority is satisfied is a reasonable amount”.

**Exceptions** – Under the EIR there is an express presumption in favor of disclosure. But the public authority can refuse to disclose the information if it would adversely affect the following matters:-

- a) international relations, defense, national security or public safety;
- b) the course of justice, ability of a person to receive a fair trial or ability of a public authority to conduct a criminal or disciplinary inquiry;
- c) intellectual property rights;
- d) the confidentiality or proceedings of any public authority where such confidentiality is protected by law;