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**Code:** GR17  
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## Freedom of Information (FOI) policy

Lead executive	Chief Executive
Authors details	Head of Corporate Affairs

Type of document	Policy
Target audience	All CWP staff
Document purpose	This policy sets out what Cheshire and Wirral Partnership NHS Foundation Trust require to ensure that staff comply with the requirements of the Freedom of Information Act 2000 and associated Codes of Practice. The policy also includes requests under the Environmental Information Regulations 2004

Approving meeting	Records and Information Systems Group	26 -Jul -18
Implementation date	November 2018	

CWP documents to be read in conjunction with	
<a href="#">HR6</a> <a href="#">CP3</a> <a href="#">IM7</a> <a href="#">IM6</a> <a href="#">GR12</a> <a href="#">GR41</a>	Mandatory Employee Learning (MEL) policy Health records policy Code of confidentiality policy Information sharing (over arching) policy Media relations policy Corporate records policy

Document change history	
What is different?	The policy has been updated to reflect changes in the management responsibilities for the administration of the Act. Minor amendments have also been made to ensure that the policy is easy to use.
Appendices / electronic forms	Appendix 2 and appendix 3 have been included to provide additional guidance regarding the process for internal reviews and when/how charges and fees may be applied when dealing with FoI requests.
What is the impact of change?	Low

Training requirements	Yes / No - Training requirements for this policy are in accordance with the CWP Training Needs Analysis (TNA) with Education CWP.
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Document consultation	
Clinical Services	Via Records and Information Systems Group
Corporate services	Via Records and Information Systems Group
External agencies	N/A

Financial resource implications	No
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External references	
1. Freedom of Information Act 2000	

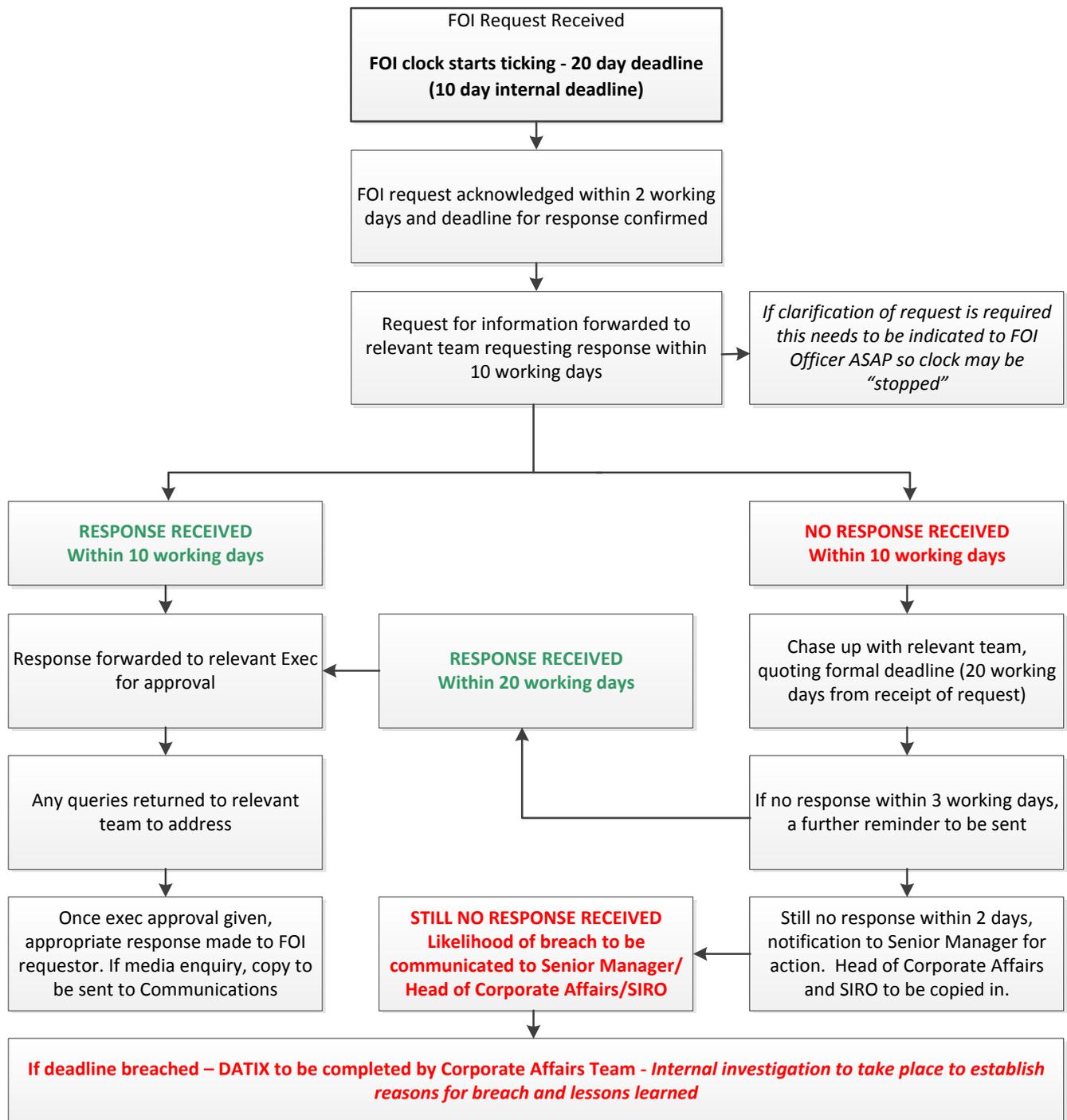
2. Environmental Information Regulations 2004
3. Lord Chancellor's Codes of Practice
4. Data Protection Act 1998
5. Information Commissioner

<b>Equality Impact Assessment (EIA) - Initial assessment</b>	<b>Yes/No</b>	<b>Comments</b>
Does this document affect one group less or more favourably than another on the basis of:		
- Race	No	
- Ethnic origins (including gypsies and travellers)	No	
- Nationality	No	
- Gender	No	
- Culture	No	
- Religion or belief	No	
- Sexual orientation including lesbian, gay and bisexual people	No	
- Age	No	
- Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
Is there any evidence that some groups are affected differently?	No	
If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?		
Is the impact of the document likely to be negative?	No	
- If so can the impact be avoided?	N/A	
- What alternatives are there to achieving the document without the impact?	N/A	
- Can we reduce the impact by taking different action?	N/A	
Where an adverse or negative impact on equality group(s) has been identified during the initial screening process a full EIA assessment should be conducted.		
If you have identified a potential discriminatory impact of this procedural document, please refer it to the human resource department together with any suggestions as to the action required to avoid / reduce this impact. For advice in respect of answering the above questions, please contact the human resource department.		
Was a full impact assessment required?	No	
What is the level of impact?	Low	

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**Quick reference flowchart**



## **1. Introduction**

The Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (the Regulations) are part of the Government's commitment to greater openness in the public sector, a commitment supported by Cheshire and Wirral Partnership NHS Foundation Trust (the Trust).

Both the Act and the Regulations came into full effect on 1 January 2005 and legislate for a general right of access (subject to exemptions/exceptions) to recorded information held by public authorities. By establishing legal rights of members of the public, it will enable them to question the decisions of public authorities more closely and ensure that the services we provide are delivered efficiently and effectively.

All non-personal information may be accessible under the legislation, including both electronic and paper versions. The legislation is retrospective and includes information held prior to January 2005.

It is the policy of the Trust that no one will be discriminated against on grounds of age, disability, gender, gender re-assignment, marital status, race (including colour) nationality and ethnic or national origins, religion or belief for sexual orientations. The Trust will provide interpretation services or documentation in other mediums as requested and necessary to ensure natural justice and equality of access.

### **1.1. Freedom of Information Act 2000**

The main features of the Freedom of Information Act are:

- From 31<sup>st</sup> October 2003, a duty on every public authority to adopt and maintain a Publication Scheme – this is a scheme which lists the type and format of information we make public (publication schemes were required to be updated by January 2009)
- From 1<sup>st</sup> January 2005, a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions
- In cases where information is exempted from disclosure, except where an absolute exemption applies, 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
- A new office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal
- A duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

The Trust believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.

The Trust believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. For any further clarification staff should contact the FOI Officer, Corporate Affairs Manager or Head of Corporate Affairs.

The Trust believes that common standards are required to ensure that the organisation is compliant with the Act. This policy is cross-referenced with other, relevant, Trust policies to ensure a consistent approach.

### **1.2 Environmental Information Regulations 2004**

Requests received relating to environmental issues e.g. clinical waste or incineration services, will be processed in accordance with the Environmental Information Regulations 2004. These requests can be made verbally and must be responded to within 20 working days of receipt. The process will be the same as for Freedom of Information Act requests.

## 2. Purpose of Policy

This policy supports the Trust's commitment to openness and honesty in all matters. The Trust wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the Trust will facilitate the development of such an environment.

This policy sets out what Cheshire and Wirral Partnership NHS Foundation Trust require to ensure that staff comply with the requirements of Act and the Regulations. The Trust believes individuals have a right to privacy and confidentiality, both the Act and the Regulations clearly explain and define the interfaces between themselves and the Data Protection Act 1998 (DPA) (to be succeeded by the new Data Protection legislation from May 2018). -This policy does not overturn the common law duty of confidentiality or statutory provision (including the Human Rights Act 1998 and the DPA) that prevent disclosure of personal identifiable information. -The right to release personal identifiable information is covered by the right of Subject Access Requests under the DPA. (See [Access to Health Records Policy CP63](#)).

This policy aims to:

- a. Ensure that all information held by the Trust is processed in accordance with the requirements of the Act and the Regulations
- b. Meet the requirements of the Information Governance Toolkit
- c. Advise staff of their responsibilities under the Act.
- d. Provide guidance on the correct way to handle requests for information.

The policy applies to all employees, permanent and temporary/bank staff, consultants and secondees working within the Trust. Everyone employed by the Trust has responsibility for handling requests for information appropriately. The policy is a guide to how the Trust will manage its obligations under the Act and the Regulations.

## 3. Procedure

The Freedom of Information Act covers any information held by this Trust in any tangible form, including electronic, video and audio recordings and. **Any request which is legible, in writing with a reply address must be treated as a Freedom of Information Act/ Environmental Information request and must be responded to within 20 working days of receipt.**

In order to support the Trust in ensuring compliance with its statutory obligations all Trust staff must:

- a. Forward immediately any requests received to the FOI Officer
- b. Fully assist the team with requests for information, paying particular attention to deadlines and guidelines for provision of information.
- c. Under no circumstances may staff respond to requests for information directly to the requestor without seeking advice or approval from the FOI Officer.

Please see [flow chart](#) on page 4 for procedure

Please see [Appendix 1](#) for guidelines when responding to FOI requests.

## 4. Proactive Dissemination of Information

### 4.1 What is the trust required to do to comply with the Freedom of information act?

#### **Publish a publication scheme**

The Trust adopted the updated model publication scheme for mental health trusts approved by the Information Commissioner in January 2009. This is permissible under section 20 of the Act and ensures compliance with section 19 of the legislation.

The Publication Scheme is housed on the Trust's Internet site and sets out the types of information which the Trust will make public, such as minutes of Trust Board meetings and documents like the Annual Report and Strategic Direction.

The publication scheme is structured around the following classes of information:

- Who we are and what we do?
- What we spend and how we spend it?
- What are our priorities and how are we doing?
- How we make decisions
- Our policies and procedures
- List and registers
- The services we offer

The Scheme is overseen and administered by the Head of Corporate Affairs, Corporate Affairs Manager and FOI Officer.

Applications for information listed in the Publication Scheme can be made from the Trust's website via an email link to a dedicated 'FOI' (freedom of information) mailbox. The 'FOI' mailbox is a shared mailbox which can be accessed by the Head of Corporate Affairs, Corporate Affairs Manager and FOI Officer. This ensures that for periods of annual leave or absence, Freedom of Information requests will be actioned. Alternatively, members of the public may put a request in writing. A log of all information requested is maintained for monitoring purposes and an FOI Disclosure Log is available on the website.

### **General rights of access**

Section 1 of the Freedom of Information Act gave a general right of access from 1<sup>st</sup> January 2005 to recorded information held by the Trust subject to certain conditions and exemptions.

This information includes, for example:

- Minutes of meetings
- Written correspondence – but not person identifiable information which is protected by the Data Protection Act
- Drafts of documents and policies (although once a further draft of a document is in existence the previous version is not disclosable)
- Emails – apart from person identifiable information which is protected by the Data Protection Act

Anyone making a request for information is entitled:

- To be informed in writing whether the Trust holds the information of the description specified in the request, and
- If the Trust holds the information to have that information communicated to them

In accordance with Section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describing the information requested. Enquirers may approach departments/services directly but should be referred immediately to the FOI Officer. A request does not have to include the words "Freedom of Information" or refer to the Act. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

This doesn't mean you have to treat every enquiry formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures. The provisions of the Act need to come into force only if:

You cannot provide the requested information straight away; or

The requester makes it clear they expect a response under the Act.

The Trust will ensure it complies with the duty to confirm or deny and to provide the information requested in 20 working days of receipt of a request, in accordance with section 10 of the Act.

Therefore, any requests received at department level must be notified immediately to the FOI Officer, Corporate Affairs Manager or Head of Corporate Affairs.

#### ***Information about how the Trust operates the Rights to Access is contained in section 4.4***

## **4.2 Implementation and compliance**

### **Office management systems**

It is essential that all staff maintain efficient and effective office management systems. This means:

- Keep your files and records in order.
- Remember that whatever you write – minutes, emails etc. were disclosable from January 1<sup>st</sup> 2005.
- The Act is fully retrospective. The public are able to access any information, including that which was created prior to January 1<sup>st</sup> 2005.

Please remember that there is a chance that the e-mail you thought to be confidential may be seen by people for whom it was not originally intended.

So, if you are using e-mail:

- Make sure that the content is verifiable, evidence based and capable of being subjected to public scrutiny.
- Make sure you are sending the information only to those people who need the information
- Be responsible about your use of e-mail; be aware that the e-mail you send may be forwarded on without your consent or knowledge.
- Remember that inappropriate or excessive use of e-mail for personal reasons may result in disciplinary action and/or removal of facilities. Both private and business use of e-mail may be subject to monitoring.
- Manage your e-mail and delete unwanted messages on a regular basis.

Finally, please ensure that the following message appears as an AutoSignature at the bottom of all messages you send from Trust facilities:

*The information contained in this e-mail may be subject to public disclosure under the Freedom of Information Act 2000. Unless the information is legally exempt from disclosure, the confidentiality of this e-mail **and your reply** cannot be guaranteed.*

This can be added by going into your Inbox in Microsoft Outlook, clicking on Tools and then AutoSignature, and typing the above text into the box, ticking the appropriate boxes to attach the AutoSignature before clicking OK to exit.

This will underpin the Trust's [GR12 Media Relations Policy](#).

## **4.3 Charges and fees**

The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. (See [appendix 4](#))

An "appropriate limit" for the purposes of section 12 of the Freedom of Information Act and section 9A of the Data Protection Act has been set at £450 for public bodies such as the health service. This equates to 18 hours at £25.00 per hour regardless of grade of staff collating the information). If the costs attributable to the time spent on these activities would cost more than the appropriate limit of £450 to answer, the Trust is not obliged to answer it.

The appropriate limit has to be applied, separately, to the duty under section 1 (1) (a) of the FOI Act to confirm or deny whether the information is held. It is only if it would cost more than the appropriate limit to confirm or deny, by itself, that the obligation to do so is removed.

It will often be immediately obvious that the cost will not exceed the appropriate limit. But if a request is more complicated and likely to take longer to answer, the Trust will have to consider on a case by case basis if it wishes to estimate whether the appropriate limit would be exceeded in advance.

The regulations set out what may be taken into account when Trusts are estimating whether the appropriate limit has been exceeded. The costs are limited to those that a Trust reasonably expects to incur in:

- Determining whether it holds the information requested
- Locating the information or documents containing the information
- Retrieving such information or documents, and
- Extracting the information from the document containing it (including editing or redacting information)

In all cases where the Trust chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

#### **4.4 Operating the rights to access**

##### **When requests are received**

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to certain conditions and exemptions. The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where the Trust:

- Reasonably requires further information in order to identify and locate the information requested,
- Has informed the applicant of that requirement.

The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required (see "*Stopping the Clock*" – Section 4.5)

Under section 2 of the Act, the Trust does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. *The Part II exemptions are listed in section 5 of this Policy.*

These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all 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. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

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

The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit. Details of charging and fees can be found in section 4.4. The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication of information that exceeds this limit.

The Trust is not obliged to comply with a request for information if the request is vexatious. Where the Trust has previously complied with a request for information which was made by any person, it is not

obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

All requests will be logged onto the Trust's FOI Log. The communications team will be advised of any requests from the media. The Medical Director/Caldicott Guardian will have input for requests involving clinical information.

### **Police requests**

Police requests for non-confidential information will be processed as a routine Freedom of Information Act request. For confidential information requests please see the [Confidentiality Policy GR10](#) which includes a form for the police to complete.

### **M.P. letters**

MP letters which are requesting corporate, non-confidential information will be processed as routine Freedom of Information Act requests.

### **4.5 Time limits**

The Trust will ensure it complies with the duty to confirm or deny and to provide the information request in 20 working days of a request, in accordance with section 10 of the Act. All staff at every level in the organisation will be required to comply with these requirements. Failure to do so may result in disciplinary action. The Trust will enforce a 10 day internal deadline for response. This allows for scrutiny of the response and Executive sign off.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with section 9(2), the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.

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

### **Stopping the clock**

If further clarification is required before a formal response can be provided, the clock may be "stopped" on the date clarification is requested and re-started when clarification has been received. The requestor should be informed of the intention to "stop the clock" and informed of the re-calculated deadline for response when the clock is re-started. In addition, as stated in the FOI Act, if a response to the clarification request is not received within three months, the request will be closed. Should the applicant respond after it lapses, the request will be classed as a new one.

### **Extension of deadline**

An extension of the deadline may be requested under the Freedom of Information Act, if the Trust needs more time to consider the public interest in disclosing or withholding the information. This should not be later than 40 working days after the date of the request. Extensions to the time limit can only be granted in certain circumstances and these must be agreed with the requestor as soon as possible. The Trust will aim to request an extension within 10 days following receipt of the original request.

### **Escalation**

The Trust enforces a 10 day internal deadline for response. If a response has not been received by the internal deadline, a reminder will be sent informing of the formal deadline and requesting the information as soon as possible. A further reminder will be sent if no response is received within 2 days copying the Senior manager of the relevant service.

If a response is still not received after the reminders notification to be sent to the Senior Manager of the relevant service for action. Head of Corporate Affairs and SIRO to be copied in. If still no response, likelihood of breach to be communicated to Senior Manager, Head of Corporate Affairs and SIRO.

If a breach occurs, a DATIX must be completed by the Corporate Affairs Team and an internal investigation is to be undertaken incorporating reasons for the breach and the lessons learned.

#### **4.6 How information will be conveyed**

When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant, the Trust shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.

In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If the Trust determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

The Trust will monitor the provision of information arising from requests under the Act by means of a Freedom of Information Act log of requests.

#### **4.7 Refusal of requests**

As indicated above, the duty to confirm or deny does not arise if the Trust:

- Using section 2 of the Act applies an exemption under Part II of the Act
- Has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant
- Under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit
- Can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust under the Act and of the right conferred by section 50 of the Act.

If the Trust is to any extent relying on a claim that the duty to confirm or deny does not arise, or on a claim that information is exempt information, a notice will be issued within twenty working days under section 17 of the Act. The notice will:

- State that fact,
- Specify the exemption in question, and
- State (if that would not otherwise be apparent) why the exemption applies.
- and at the time when the notice under 4.5.5 above is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 of the Act – the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Trust expects that a decision will have been reached.

As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the Act, such estimates as described in 4.5.5 should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Trust will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

If applying a qualified exemption under subsection (1)(b) or (2)(b) of section 2 of the Act the Trust will, either in the notice issued under 4.5.5 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

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

The public interest means the public good - as distinct from what is of interest to the public or the private interests of the requester.

Public interest tests will, wherever possible, occur within the normal time for compliance (20 working days).

The Trust will operate on the presumption that the information should be disclosed.

The Trust will consider the public interest arguments for and against disclosure and their relative weight, irrespective of the information's creator or owner. In addition, the Trust will decide whether any harm or unfairness arising from disclosure is outweighed by the public interest in making the information available. This can be affected by the likelihood and severity of any prejudice; The age of the information; How far the requested information will help public understanding and whether similar information is already in the public domain.

The Public Interest Test will be carried out by the Freedom of Information Officer and would be reviewed by the Corporate Affairs Manager and the Head of the relevant department. A copy of the reviewed public interest test form will be sent jointly with the final response for approval to the Executive Director.

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

If the Trust is relying on a claim that section 12 or 14 of the Act apply, the notice will state that fact. If the Trust is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

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

#### **4.8 Duty to provide advice and assistance**

In accordance with section 16 of the Act the Trust will make every reasonable effort to assist the public with making a request, for example if the request is made verbally by someone who is unable to read or write. In this case assistance will be given to the applicant to write down their request and encourage him/her to verify with a friend or family member that the written request is in fact what is required. A similar approach will be taken with applicants who do not speak English as a first language and require assistance to write down their request.

The Trust will ensure that the systems and procedures that are deployed to meet the section 16 duty also conform to the Code of Practice issued under section 45 of the Act.

#### **4.9 Transferring requests for information**

A request can only be transferred where the Trust receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If the Trust is in receipt of a request holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Trust recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).

Upon receiving the initial request for information, the Trust will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Trust will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Trust must be certain as to the extent of the information relating to the request which it holds itself.

If the Trust believes that some or all of the information requested is held by another public authority, the Trust 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 original authority believes to hold the information;
- Providing him or her with contact details for that authority.

If the Trust considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Trust will consider:

- Whether a transfer is appropriate; and if so
- Whether the applicant is likely to have any grounds to object to the transfer;

If the Trust reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so.

Where there are reasonable grounds to believe an applicant is likely to object, the Trust will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Trust is unable either to advise the applicant which it holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

#### **4.10 Consultation with third parties**

The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998 ("the DPA"). Unless an exemption provided for in the Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption at section 41 of the Act would apply), the Trust will consult that 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. Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

Where information constitutes "personal data" within the meaning of the DPA, the Trust will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

The Trust will undertake consultation where:

- The views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- The views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

The Trust may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Trust will consider what is the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- The public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- The views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- No exemption applies and so under the Act's provisions, the information must be provided.

Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

The fact that the 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. In all cases, it is for the Trust, not the third party (or representative of 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.

#### **4.11 Public sector contracts**

When entering into contracts the Trust will refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. The Trust will take care when drawing up any such schedule, and be aware that any

restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.

It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor information which the authority has provided to the contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

#### **4.12 Accepting information in confidence from third parties**

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

The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

#### **4.13 Complaints about the discharge of the duties of the Trust under the Act**

In accordance with Section 45 of the Code of Practice (Secretary of State for Constitutional Affairs Code of Practice on the discharge of public authorities functions under Part 1 of the Freedom of Information Act 2000. Issued under section 45 November 2004) the Trust will undertake an internal review following a complaint to the Trust in relation to how the Trust has discharged its duties under the Act. The internal review will analyse and review how the Trust managed the Freedom of Information Act request and be undertaken by a senior member of staff e.g. executive, who has not been directly involved in the processing of the request. It is the Trust's aim to undertake all internal reviews within 20 days of receipt of a request. The process for an internal review is attached as [Appendix 2](#). The internal review response template is attached as [Appendix 3](#).

Under section 50 of the Act complainants have the right to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

#### **4.14 Records management**

The Trust has a separate policy with supporting systems and procedures that will ensure compliance with Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 and the Department of Health's Guidance Records Management NHS Code of Practice.

#### **4.15 Email policy**

Staff must adhere to the Trust [GR12 Media Relations Policy](#)

### **5 Exempt information under part II of the Freedom of Information Act 2000**

There are two types of class exemption:

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

With the exception of s21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the Act are:

- Section 21, Information accessible to applicant by other means
- Section 23, Information supplied by, or relating to, bodies dealing with security matters.
- Section 32, Court Records
- Section 34, Parliamentary Privilege
- Section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998 (to be succeeded by the new Data Protection legislation from May 2018) Note: applicants may apply for information which contains both personal data and non personal data e.g. internal reports. The Trust must make clear which act the information is being disclosed under i.e. DPA or FOI. If disclosing under FOI only information may be disclosed which would be disclosed to any member of the public.
- Section 41, Information provided in confidence
- Section 44, Prohibitions on disclosure

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

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

More information on the exemptions can be found on the HMSO website at [www.legislation.hmso.gov.uk/acts/en/2000en36.htm](http://www.legislation.hmso.gov.uk/acts/en/2000en36.htm).

## Appendix 1 - Freedom of Information Requests – Guidance for Services/Departments

### Departmental process for processing and approving FOIs

The Freedom of Information Act covers any information held by this Trust in any tangible form, including electronic, video and audio recordings. **Any request which is legible, in writing with a reply address must be treated as a Freedom of Information Act/ Environmental Information request and must be responded to within 20 working days of receipt.**

Due to the tight deadline to respond to each FOI it is important each department has a well-defined process and established lines of responsibility to respond within the given timeframes.

We would like to suggest the following in order to support the Trust in ensuring compliance with its statutory obligations:

- Nominate 2 members of staff who will be responsible for the managing the FOIs and the communication with the FOI officer.
- The nominated member of staff will be responsible for liaising internally with the relevant people within the department and ensuring the response is processed and returned to the FOI Officer within the given deadline.
- If staff require further clarification from the requestor, the FOI administrator should contact the FOI Officer as soon as possible so further clarification can be sought and the clock stopped accordingly.
- Nominate a senior member of the department who will be in charge of reviewing and approving the final response prior to sending back the response to the FOI Officer.
- Provide only the final and approved response to the FOI Officer by no later than the 10<sup>th</sup> day of having received the request. Deadline and other supporting information will be provided within the email request.
- Under no circumstances may staff respond to requests for information directly to the requestor without seeking advice or approval from the FOI Officer.

Please remember the FOI Officer does not have the capacity to assess/ review the accuracy of your response. **Services are asked to ensure information has been verified by a relevant senior member of staff.**

Please make arrangements for service continuity during annual leave/ staff sickness periods.

Always keep the FOI officer informed of progress so additional arrangements can be put in place if and when needed.

### On receipt of a written request for information from a service user/carer/member of public etc.:

- Forward immediately to FOI Officer for acknowledgement, logging and co-ordination of request **(NB FOI requests must be responded to within 20 working days, so please do not delay in forwarding on)**
- If appropriate, advise requestor that their request has been forwarded to the relevant department and they will be receiving an acknowledgement within 2 working days.

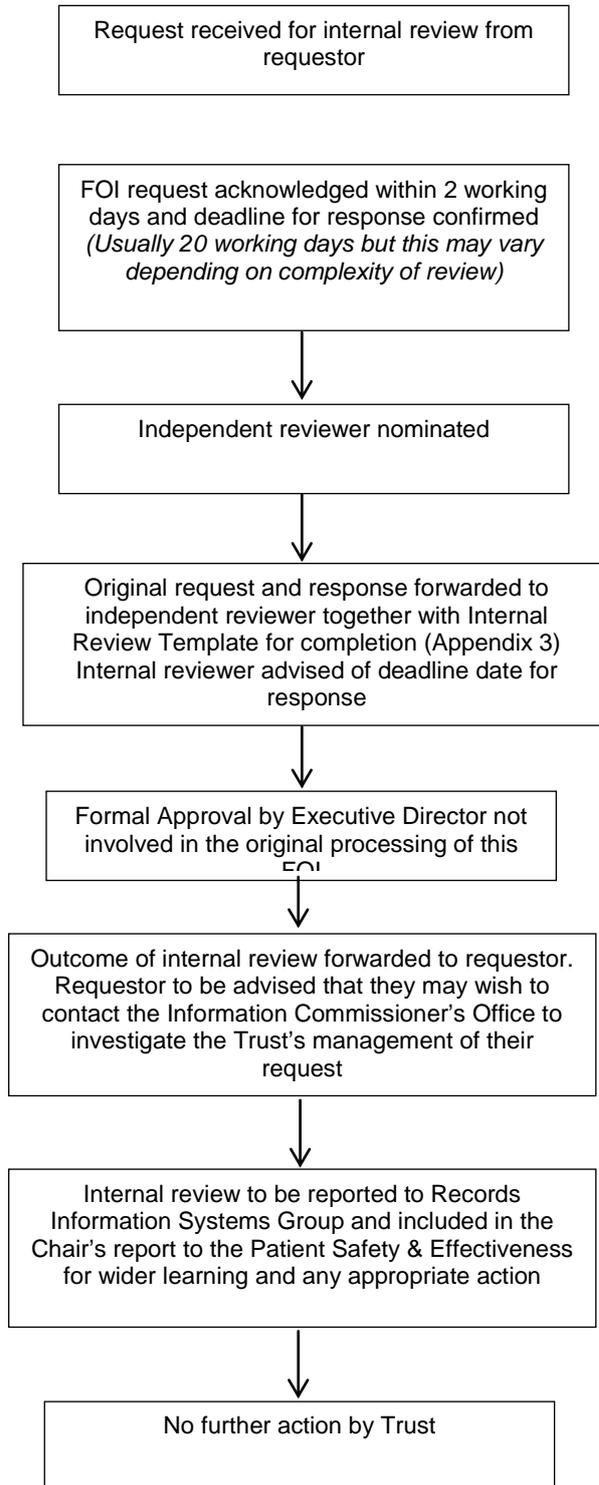
## Guidance for services/departments when asked to provide information for a FOI request:

*Please note that the Trust is obliged to provide information requested if we hold it, and it is not subject to any exemptions under Part II of the Freedom of Information Act. Failure to provide information requested, and failure to provide a response within the 20 working day deadline, may incur a complaint to the Information Commissioners Officer, and subsequent investigation and possible fine, together with associated negative publicity.*

1. Please note the 10 day internal deadline for responses and ensure all responses are provided by this date. This allows for scrutiny of the response and formal sign off in accordance with the delegated accounts should this be required. If you foresee any issues providing the information by the internal deadline, please advise the FOI Officer immediately.
2. Please read the request thoroughly – only the information requested should be provided.
3. Do not supply any personally identifiable information.
4. Where contact details are requested, please only supply senior manager details as these are already in the public domain.
5. Please ensure the information provided is clear and responds *specifically* to the FOI request, in order to assist the FOI Officer with collation of the formal response. To assist with your response, if appropriate, a spreadsheet or answer sheet may be attached to the request for your completion – this will ensure all appropriate information is provided and allow for easier collation when drafting the formal response.
6. Please seek approval from your Senior/Line Manager before forwarding the requested information to the FOI Officer.
7. Please advise the FOI Officer as soon as possible if:
  - You have concerns about disclosing the information requested e.g. commercially sensitive
  - You have concerns regarding the nature of the request/requestor or disclosure of information
  - The information may be damaging to the Trust (The Trust is obliged to provide the information requested if we hold it and it does not meet exemption criteria, but Executive approval will be sought before disclosure).
  - The information requested is available publicly elsewhere e.g. Trust Website
  - If the information requested is not available, i.e. not recorded or now with another organisation following a service re-organisation
  - If the information requested cannot be easily collated and would exceed the time limit stipulated by the FOIA 2000 e.g. a manual trawl of several hundred files. **NB the current time limit is a maximum of 18 hours at £25.00 per hour = £450.** In this event, please provide an estimate of the time to collate the information requested as the Trust is obliged to offer provision of the information at a cost.
8. If you have any concerns or difficulties regarding the FOI request, please contact the FOI, Officer as soon as possible to discuss further.

Please see the [flowchart](#) on page 4 for additional guidance.

## Appendix 2 - Procedure for Internal Review of FOI Response



*In the event of a subsequent ICO investigation, the Trust will take instructions from the ICO as appropriate.*



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<b>Request for internal review:</b>
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<b>FINDINGS OF INTERNAL REVIEW</b>
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<b>Procedural Issues:</b>
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**Consideration of response:**

**Recommendations:**

**Conclusion:**

**Internal review undertaken  
by:**

**Date:**

## Appendix 4 - Charging for Information

**In line with the Act, reasonable charges can be made for excessive/additional copies of information. The following charging regime will be used by the Trust:  
Photocopying/Printing**

A4 black and white	40 pence per side
A3 black and white	50 pence per side
A4 colour	85 pence per side
A3 colour	95 pence per side
<b>Postage</b>	Standard 2nd class mail charges

Charges will not be made unless the cost of providing the information totals more than £20.

As outlined by the Act, charges for searching for information cannot be made under £450.