



Freedom of Information Act 2000 and Environmental Information
Regulations 2004 Policy

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The Trust is committed to a duty of candour by ensuring that all interactions with patients, relatives, carers, the general public, commissioners, governors, staff and regulators are honest, open, transparent and appropriate and conducted in a timely manner. These interactions be they verbal, written or electronic will be conducted in line with the NPSA, 'Being Open' alert, (NPSA/2009/PSA003 available at www.nrls.npsa.nhs.uk/beingopen and other relevant regulatory standards and prevailing legislation and NHS constitution)

It is essential in communications with patients that when mistakes are made and/or patients have a poor experience that this is explained in a plain language manner making a clear apology for any harm or distress caused.

The Trust will monitor compliance with the principles of both the duty of candour and being open NPSA alert through analysis of claims, complaints and serious untoward incidents recorded within the Ulysses Risk Management System.

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1 Executive Summary

1.1 Policy Scope

- i. This policy has been established to ensure that the Liverpool Women's NHS Foundation Trust meets its legal obligations under the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIR), and related statutory codes of practice (see section 8). The legislation, and therefore this policy, applies to all recorded information held by the Liverpool Women's Hospital and its staff, departments, subsidiaries and agents, regardless of format, storage medium or age. It also applies to any companies which are or may be wholly owned by the Trust, and to information held by other organisations or individuals on behalf of the Trust.
- ii. This policy and the procedures which implement it will ensure that the Trust conforms to the Act, Regulations and associated codes of practice, the key requirements of which are that:
 - Information which is routinely published by the Trust is made available in accordance with the Trust's Freedom of Information Publication Scheme.
 - Information which is not covered by the Publication Scheme is made available to enquirers on request, within 20 working days, unless a valid exemption or limit applies.
 - Exemptions under the Act and Regulations are applied appropriately, and in accordance with the legislation.
 - A fair and efficient internal appeal system is administered.
- iii. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 is part of the Government's commitment to greater openness in the public sector, a commitment supported by Liverpool Women's NHS Foundation Trust, referred to hereafter as the Trust. The Freedom of Information Act 2000, referred to hereafter as the Act, will further this aim by helping to transform the culture of the public sector to one of greater openness. It will allow members of the public to question the decisions of public authorities more closely and ensuring that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory Code of Practice on Openness in the NHS 1995.
- iv. The Trust's Freedom of Information Act and Environmental Information Regulation Policy defines the scope of Freedom of Information and Environmental Information Management, the processes it entails and how the Trust ensures that good practice is maintained.

- v. The Trust Freedom of Information Procedure is a supporting document which should be used in conjunction with the FOI Policy and details the local process to be followed within the Trust.

2 Introduction

- i. This Policy supports the principle that openness and not secrecy should be the norm in public life. The Trust wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the Trust will support the development of such an environment.
- ii. The Trust believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 2018 (DPA) and is dealt with in other associated Trust policies.
- iii. 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.
- iv. The Trust believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this knowledge.
- v. The Trust believes that common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other Trust policies and procedures.

3 Policy Objectives

- i. The purpose of this policy is to ensure compliance with the provisions of FOI, EIR and other access regimes with effect from 1 January 2005. The Trust will also ensure compliance with the Data Protection Act, which provides for the protection of personal information held by the Trust. This policy sets out the general principles that will be adopted by the Trust in response to requests for information under all statutory access regimes.
- ii. The main features of the Act are:-
 - a general right of access from 1st January 2005 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:
 - a. Inform the applicant whether they hold the information requested

- b. Communicate the information to him or her unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure;
 - a duty on every public authority to adopt and maintain a Publication Scheme, specifically applicable to the NHS from 31st October 2003;
 - 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.
- iii. The Policy is a statement of what the Trust intends to do to ensure compliance with the Act. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures managed through the Information Governance Committee.
- iv. The Policy will apply to all Trust employees and Non-Executive Directors.
- v. The Policy will provide a framework within which the Trust will ensure compliance with the requirements of the Act.
- vi. The Policy will underpin any operational procedures and activities connected with the implementation of the Act.

4 Duties / Responsibilities

- i. The Trust has a corporate responsibility to ensure that it conforms to and implements the Freedom of Information Act and the Environmental Information Regulations. The Trust is accountable to the Information Commissioner for its compliance with the Act and Regulations. The executive officer with overall responsibility for this policy is the Director of Finance, who has strategic responsibility within the Trust for Freedom of Information and Environmental Information.

4.1 Responsibilities of Executive FOI Lead and Information Governance Manager

- i. The FOI Executive Lead has overall responsibility for access to information and amendments to this Policy. The FOI Executive lead will be responsible for decision making, in particular in relation to any refusal of requests for information. The Information Governance Manager will take the lead role and be responsible for the provision of advice and guidance on FOI and EIR to all staff. They will also be a contact point for the public in dealing with all requests for information.

4.2 Responsibilities of Information Governance Committees

- i. This Policy is monitored through the Information Governance Committee. The IG Committee will also monitor any key performance indicators set against FOI management.

4.3 Responsibilities of Divisional and Department Managers

- i. The Division or Department Manager will ensure that this Policy is accessible and complied with in their own departments and ensure for any routine requests where information is released they abide by the FOI Act, EIR and DPA Act. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this Policy. They are also responsible for ensuring staff are updated in regard to any changes in this Policy.

4.4 Responsibilities of All staff and Non-Executive Directors

- i. All staff and Non-Executive Directors will have the responsibility for ensuring that requests for information are dealt with in accordance with this policy. A failure to adhere to this Policy and its associated procedures may result in disciplinary action.

4.5 Responsibilities of the Chief Executive

- i. The Chief Executive will receive any complaints or feedback in connection with access to information. These would be handled in accordance with the Trust's Complaints Procedure.

5 Main Body of Policy

5.1 Policy Statement

- i. The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000, Environmental Information Regulations 2004 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act.

5.2 Publication Scheme

- i. The Trust will adopt a model Publication Scheme developed by the NHS Freedom of Information Project Board and approved by the Information Commissioner in March 2003. This is permissible under section 20 of the Act and ensures compliance with section 19 of the legislation.
- ii. The Trust's Publication Scheme will be a prospective document, detailing the information that the Trust publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information.
- iii. The Publication Scheme will be available in hard copy on request and through our website. It will be subject to regular review in terms of content.
- iv. Applications for information listed in the Publication Scheme may be received verbally or in writing. The Trust will establish systems and procedures to process applications arising from the Publication Scheme.

5.3 General Rights of Access

- i. Section 1 of the Act gives a general right of access from 1st January 2005 to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information (see 2.3.2) to the Trust is entitled:
 - a. to be informed in writing whether the Trust holds the information of the description specified in the request, and
 - b. if the Trust holds the information to have that information communicated to them.
- ii. 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 the certain conditions and exemptions. The Trust will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.
- iii. In accordance with section 8 of the FOI 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 describes the information requested. 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. However requests for environmental information under EIR can be made verbally. Responses to both FOI and EIR requests regardless of how they were received must be provided in writing from the Trust.
- iv. All FOIA and EIR requests will be logged and monitored on the disclosure log maintained by the FOI Lead.

5.4 Conditions and Exemptions

- i. 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:
 - a. reasonably requires further information in order to identify and locate the information requested, and
 - b. has informed the applicant of that requirement.
- ii. The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.
- iii. 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. 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 Part II exemptions are listed in Appendix A of this Policy. 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.

- iv. The duty to confirm or deny does not arise if a fees notice (see 2.5.0) 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.
- v. 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 that will be established in national Fees Regulations. 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.
- vi. 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 subsequent, 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.

5.5 Charges and Fees

- i. 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. The Publication Scheme and the procedures that support this Policy will provide further guidance on charging.
- ii. The Trust will follow, when they are published, the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.
- iii. In all cases where the Trust chooses to charge for information, charges are 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.
- iv. 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.

5.6 Time limits for compliance with requests

- i. The Trust will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act.
- ii. The Trust has an overall duty to respond to Freedom of Information within 20 days, those with responsibility for responding to FOI requests will, as far as is reasonably

practicable, ensure the information is sent to the Information Governance Department no later than the 10th working day, which will then allow sufficient time for Senior Management approval of the outgoing FOI requests

- iii. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.
- iv. 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.
- v. 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 (see 2.8.0 below).

5.7 Means by which information will be conveyed

- i. When an applicant, upon making their request for information, expresses a preference for communication by any one or more of the following means:-
 - a. a copy of the information
 - b. an opportunity to inspect a record containing the information
 - c. a digest or summary of the information
- ii. The Trust shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.
- iii. 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.
- iv. The Trust will establish systems and procedures to monitor the provision of information arising from requests under the Act.

5.8 Refusal of requests

- i. As indicated above, the duty to confirm or deny does not arise if the Trust:
 - (a) using section 2 of the Act applies an exemption under Part II of the Act, as illustrated in Appendix A,

- (b) 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,
 - (c) under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit,
 - (d) can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.
- ii. 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 (see 2.10.0).
- iii. If the Trust is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information a notice will be issued within twenty working days under s17 of the Act. The notice will:
 - (a) state that fact,
 - (b) specify the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
- iv. Where the Trust is relying on a claim:
 - (a) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) of the Act as an absolute exemption is relevant to the request, or
 - (b) that the information is exempt only by virtue of a qualified exemption, a provision not specified in section 2(3),
- v. and at the time when the notice under 2.8.3 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.
- vi. As indicated by the Lord Chancellor’s Code of Practice issued under section 45 of the Act, such estimates as described in 2.8.4 should be realistic and reasonable and compliance is expected unless there are extenuating circumstances.
- vii. 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.

- viii. 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 2.8.3 above or a separate notice given within such a time as is reasonable in the circumstances, state 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.
- ix. The statement should not involve the disclosure of information which would itself be exempt information.
- x. 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.
- xi. The Trust will keep a record of all notices issued to refuse requests for information on the Disclosure Log.

5.9 Duty to provide advice and assistance

- i. The Trust will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the Act.
- ii. 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.

5.10 Transferring Requests for Information

- i. 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).
- ii. 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.

- iii. 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:
 - a. contacting the applicant and informing him or her that the information requested may be held by another public authority;
 - b. suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
 - c. providing him or her with contact details for that authority.
- iv. 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:
 - a. whether a transfer is appropriate; and if so
 - b. whether the applicant is likely to have any grounds to object to the transfer;
- v. 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.
- vi. 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.
- vii. 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.

5.11 Consultation with Third Parties

- i. 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 2018 ("the DPA").
- ii. 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.

- iii. 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.
- iv. 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.
- v. The Trust will undertake consultation where:
 - a. the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
 - b. the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.
- vi. 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:
 - a. the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
 - b. 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;
 - c. no exemption applies and so under the Act's provisions, the information must be provided.
- vii. 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.
- viii. 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.

- ix. In relation to staff information held, the Trust will ensure that all processing of employee data is compliant with the terms of the Data Protection Act 2018. This will apply to centrally held records and records held locally by line managers,
- x. The Trust will consider requests for information about its staff on a case by case basis, if there is some reason to think that disclosure would put someone at risk then disclosure may be refused.

5.12 Public Sector Contracts

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

5.13 Accepting Information in Confidence from Third Parties

- i. 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.
- ii. 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.

5.14 Complaints about the discharge of the duties of the Trust under the Act

- i. The Trust will implement a procedure for dealing with complaints about the discharge of the duties of the Trust under the Act, including the handling of requests for information.
- ii. The procedure will refer applicants to the right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

5.15 Records Management

- i. The Trust will have 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 2016.
- ii. The policy and associated procedures will address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Trust. Annex D2 of the Records Management Code of Practice 2016 will be adhered to for retention and destruction guidance of FOI/EIR information.

6 Key Reference

- i. Trust information on Freedom of Information (FOI) and Environment Information Regulations (EIR) can be accessed on the Trust intranet. The FOI/EIR Policy, Procedure and FOI Publication Scheme can be found on the trust intranet. The FOI Publication Scheme can also be found on the Trust's website.
- ii. Information on a public authority's legal obligation to provide public access to official information can be found on the internet at the Information Commissioners Office website <https://ico.org.uk/for-organisations/guidance-index/>

iii. Key external reference documents and legislation applied to this policy are listed below:

- Data Protection Act 2018
- Freedom of Information Act 2000
- The Environmental Information Regulations 2004
- Records Management: NHS Code of practice 2016
- 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

7 Associated Documents

i. Key internal documents associated with this policy are listed below:

- Freedom of Information Procedure
- Data protection policy
- Information Governance policy
- Records management policy
- Information security policy

8 Training

i. The Information Governance Manager will work with the Business Partner for Learning and Development, and the Trust's Information Governance Committee, to ensure that training on the Act is available to staff through Corporate Induction, mandatory training programmes and awareness raising communications.

9 Policy Administration

9.1 Consultation, Communication and Implementation

Consultation Required	Authorised By	Date Authorised	Comments
Impact Assessment			
GDPR			
Have the relevant details of the 2010 Bribery Act been considered in the drafting of this policy to minimise as far as reasonably practicable the potential for bribery?	Yes ✓		
External Stakeholders			
Trust Consultation Intranet Staff via	Start date: Jan 17 within IG meeting		End Date: Jan 17 within IG meeting

Describe the Implementation Plan for the Policy (and guideline if impacts upon policy) (Considerations include; launch event, awareness sessions, communication / training via CBU's and other management structures, etc)	By Whom will this be Delivered?
Circulate policy to all Senior Managers (clinical and non-clinical) and Service Managers. Policies launch using internal communication structures.	Information Governance Manager to circulate policy to senior managers. Implementation of the policy is the responsibility of service managers. Information Governance Manager

Version History

Date	Version	Author Name and Designation	Summary of Main Changes
31/03/2023	8.4	Head of Information Governance and Records	General wording review and re-approval by Information Governance Committee. Update to job title of Head of Information Governance to add "and Records" to title. Re-allocation of policy sponsorship to the Chief Information Officer

February 2022	8.2	Head of Information Governance	Minimal wording changes and updates
March 2019	8.1	Policy Officer	New automated template
January 2017	8.0	Information Governance Manager	Transfer of FOI responsibility to Information Governance Department and implementation of 10 day internal deadline for responding to requests
June 2015	7.0	Corporate Support Manager	Reconfigured policy template.
April 2012	6.0	Corporate Support Manager	Reconfigured policy template defining key performance indicators at front of policy document. Included Environment information regulations act 2004. Minor amendments to content.
Jan 2011	5 DRAFT	Trust Secretary	Amend format of policy to meet standards.
Nov 2009	4.0	Director of Corporate Affairs	Minor amendments
May 2008	3.0	Director of Corporate Affairs	Minor amendments
Dec 2004	2.0	Information Governance Manager	Minor amendments
Sept 2003	1.0	Information Governance Manager	New policy to conform to Freedom of Information Act 2000 requirements.

10 Appendices

10.1 APPENDIX A Exempt Information under Part ii Of The Freedom Of Information Act 2000

There are two types of class exemption:

- a. absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- b. 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 section 21 (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)
- 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 Information Commissioners Office website at

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

10.2 APPENDIX B Glossary of Terms

Absolute exemption – applied to information that does not have to be released to the applicant either through a Publication Scheme (q.v.) or through the general right of access (q.v.) under the Act. Information to which an absolute exemption applies does not require a public authority (q.v.) to take a test of prejudice or the balance of public interest to be in favour of non-disclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

Applicant – the individual(s), group or organisation requesting access to information under the Act.

Duty to confirm or deny – any person making a request for information to a public authority (q.v.) is entitled to be informed in writing by that authority whether the public authority the information specified in the request or not.

Fees Notice – a written notification issued to an applicant (q.v.) stating that a fee is payable and exempts public authorities (q.v.) from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses.

Fees Regulations – national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

General right of access – Section 1 of the Act confers a general right of access to information held by public authorities (q.v.). An applicant (q.v.) has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

Information Commissioner – The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

Lord Chancellor's Department – The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts.
- The appointment of judges, magistrates and other judicial office holders.
- The administration of legal aid.

- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

Public authority – The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

- (a) on the face of the Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
- (b) by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
- (c) by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or
- (d) by reference to the definition of a publicly owned company in section 6.

Publication Scheme – a scheme specifying the classes of information which it publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

Qualified exemption – Information to which a qualified exemption applies requires a public authority (q.v.) to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

11 Initial Equality Impact Assessment Screening Tool

Name of policy/ business or strategic plans/CIP programme: Freedom of Information Act 2000 and Environmental Information Regulations 2004 Policy	Details of policy/service/business or strategic plan/CIP programme, etc: This policy is a statement of what the Trust intends to do to ensure compliance with the Freedom of Information Act and Environmental Information regulations Act.	
Does the policy/service/CIP/strategic plan etc affect (please tick)		
Patients <input type="checkbox"/> Staff <input type="checkbox"/> Both <input type="checkbox"/>		
Does the proposal, service or document affect one group more or less favourable than another on the basis of:	Yes/No	Justification/evidence and data source
Age	N	The policy is committed to the principles of openness, transparency and accountability embodied in the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
Disability: including learning disability, physical, sensory or mental impairment.	N	
Gender reassignment	N	
Marriage or civil partnership	N	
Pregnancy or maternity	N	
Race	N	
Religion or belief	N	
Sex	N	
Sexual orientation	N	
Human Rights – are there any issues which might affect a person’s human rights?		Justification/evidence and data source
Right to life	N	The policy is committed to the principles of openness, transparency and accountability embodied in the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
Right to freedom from degrading or humiliating treatment	N	
Right to privacy or family life	N	
Any other of the human rights?	N	
EIA carried out by: Russell Cowell, Information Governance Manager Quality assured by:	01/04/2022	