

**Freedom of Information Act 2000 and Environmental Information
Regulations 2004 Policy**

Version	9.0
Designation of Policy Author(s)	Head of Information Governance and Patient Records
Policy Development Contributor(s)	None
Designation of Sponsor	Chief Information Officer
Responsible Committee	Information Governance Committee
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Coverage	Trust Wide

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.

CONTENTS

Content	Page
1 Executive Summary.....	3
1.1 Policy Scope	3
2 Introduction	3
3 Policy Objectives	4
4 Duties / Responsibilities	4
4.1 Responsibilities of Executive FOI Lead and Information Governance Manager	4
4.2 Responsibilities of Information Governance Committees	4
4.3 Responsibilities of Divisional and Department Managers	5
4.4 Responsibilities of All staff and Non-Executive Directors	5
4.5 Responsibilities of the Chief Executive	Error! Bookmark not defined.
5 Main Body of Policy.....	5
5.1 Policy Statement	5
5.2 Publication Scheme	5
5.3 General Rights of Access	5
5.4 Conditions and Exemptions	6
5.5 Charges and Fees	6
5.6 Time limits for compliance with requests	7
5.7 Means by which information will be conveyed	7
5.8 Refusal of requests	7
5.9 Duty to provide advice and assistance	8
5.10 Transferring Requests for Information	Error! Bookmark not defined.
5.11 Consultation with Third Parties	8
5.12 Public Sector Contracts	9
5.13 Accepting Information in Confidence from Third Parties	10
5.14 Complaints about the discharge of the duties of the Trust under the Act.....	Error! Bookmark not defined.
5.15 Records Management.....	10
6 Key Reference	10
7 Associated Documents	11
8 Training	11
9 Policy Administration	12
9.1 Consultation, Communication and Implementation	12
10 Appendices.....	Error! Bookmark not defined.
10.1 APPENDIX A Exempt Information under Part ii Of The Freedom Of Information Act 2000 Error! Bookmark not defined.	
10.2 APPENDIX B Glossary of Terms	Error! Bookmark not defined.
11 Initial Equality Impact Assessment Screening Tool	14

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.

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 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.
- iii. 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 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.
- iii. The Policy will apply to all Trust employees and Non-Executive Directors.
- iv. The Policy will provide a framework within which the Trust will ensure compliance with the requirements 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. 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. Head of Information Governance and Patient Records 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.

4.1 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.

4.2 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.

4.3 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.

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.

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.
- 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. 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.
- iv. 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.
- v. The Trust is not obliged to comply with a request for information if the request is vexatious.

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. 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.
- iii. 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 will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.
- iv. 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.

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.
- 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
- iv. 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.
- v. The statement should not involve the disclosure of information which would itself be exempt information.
- vi. 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,

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.

5.10 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 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.
- vi. 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,
- vii. 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.

5.11 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. 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.
- iii. The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature.
- 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.

5.12 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.

5.13 Records Management

- i. The Trust will have a separate policy with supporting systems and procedures that will ensure compliance with Code of Practice on the Management of Records and the Department of Health's Guidance Records Management: NHS Code of Practice.

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

None

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	R. Cowell	14/04/2023	
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 Staff Consultation via Intranet	Start date: February 2023	End Date: February 2023	

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?
<p>Circulate policy to all Senior Managers (clinical and non-clinical) and Service Managers.</p> <p>Policies launch using internal communication structures.</p>	<p>Information Governance Manager to circulate policy to senior managers. Implementation of the policy is the responsibility of service managers.</p> <p>Information Governance Manager</p>

Version History

Date	Version	Author Name and Designation	Summary of Main Changes
31/03/2024	8.5	Head of Information Governance and Patient Records	No policy changes. A review of the wording with a view to simplify the policy has been undertaken, resulting in the removal of a significant number of paragraphs
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 Equality Impact Assessment

Does The Policy Affect:	Staff		Patients		Both	X
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Equality Group	Impact (Positive/Negative/Neutral)
Race (All Ethnic Group)	Neutral
Disability (Inc Physical, long term health conditions & Mental Impairments)	Neutral
Sex	Neutral
Gender Re-Assignment	Neutral
Religion Or Belief	Neutral
Sexual Orientation	Neutral
Age	Neutral
Marriage & Civil Partnership	Neutral
Pregnancy & Maternity	Neutral
Other e.g., caring responsibilities, human rights etc.	Neutral

For each protected characteristic, consider whether the impact is positive. If so, provide supporting evidence to demonstrate how your decision was made and the impact that the policy will have with consideration of each protected characteristic (e.g., protected characteristic – impact – rationale)

Not Applicable

For each protected characteristic, consider whether the impact is negative. If so, provide supporting evidence to demonstrate how your decision was made and the impact that the policy will have with consideration of each protected characteristic (e.g., protected characteristic – impact – rationale)

Not Applicable

If your assessment has identified any negative impacts, please detail any actions that have been put in place to mitigate these (upon approval of EIA these actions will be shared with the Equality, Diversity and Inclusion Committee):

Outcome	Actions Required	Time Scale	Responsible Officer

<p>Is there evidence that the s. 149 Public Sector Equality Duties (PSEDs) will be met? Consider whether the proposed policy will...</p> <ul style="list-style-type: none"> - Eliminate discrimination, victimisation, harassment, and any unlawful conduct that is prohibited under this act - Advance Equality of opportunity - Remove or minimise disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic - Take steps to meet the needs of people who share a relevant protected characteristic that are different from the needs of people who do not share it - Encourage people who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such people is disproportionately low. - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. (Consider whether this is engaged. If engaged, consider how the project tackles prejudice and promotes understanding - between the protected characteristics) <p>Explain your answers below.</p>	
<p>The policy is an administrative policy, which implements established legal obligations neutrally.</p>	
<p>Does the EIA have regard to the need to reduce inequalities for patients with access to health services and the outcomes achieved? (this section is a requirement for any services outlined within the NHS England and Improvement Core 20 Plus 5 approach to health inequalities) Explain.</p>	
<p>The policy is an administrative policy, which implements established legal obligations neutrally.</p>	
<p>Section 2:</p> <p>To be completed by the EDI Manager authorising the EIA</p> <p>Anything for noting or any recommendations for consideration by the Board</p> <p><i>Guidance Note: Will PSEDs be met? Are Core 20 Plus 5 services considering patient health inequalities?</i></p>	
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<p>Review Date:</p>	<div></div>
<p>Additional Supporting Evidence and Comments:</p> <div></div>	