

Freedom of Information Policy and Procedure (N-043)

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<i>Minor amendments made prior to full review date above (see appended document control sheet for details)</i>	
<i>Date approved by Lead Director:</i>	<i>Information Governance Group – 21/09/22</i>
<i>Date EMT as approving body notified for information:</i>	<i>September 2022</i>

Policies should be accessed via the Trust intranet to ensure the current version is used

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1. INTRODUCTION

The Freedom of Information Act 2000 (referred to hereafter as the Act) provides individuals with a general right to access all types of recorded information by public authorities. The right is subject to certain exemptions. The aim of the Act is to promote openness and accountability within the public sector. It seeks to balance three rights:

- the right to information;
- the right to confidentiality;
- the right to effective public administration.

The Act supplements and complements the Data Protection Act 2018 and General Data Protection Regulation. It is fully retrospective. The main features of the Act are:

- 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 duty on every public authority to adopt and maintain a Publication Scheme;
- wide powers of the Information Commissioner to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
- a duty on the Lord Chancellor, and all of his successors to promulgate Codes of Practice for guidance on specific issues.

The purpose of this policy is therefore to ensure that the Trust fulfils and maintains its obligations as specified in the Act.

2. SCOPE

The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 are adhered to and in particular that:

- a significant amount of routinely published information about the Trust is available to the public as a matter of course through the Publication Scheme;
- other information not included in the Publication Scheme is readily available on request and as such a request is dealt with in a timely manner;
- in cases where information is covered by an exemption, consideration is given as to whether or not the information should be released;
- a properly structured approach to managing records is in place to ensure that essential records of the Trust's activities are maintained in appropriate detail.

Requests for information which fall within the scope of the parallel legislation of the Environmental Information Regulations 2004 will be dealt with within the framework of that legislation.

This policy does not cover:

- information made available by the Trust on a daily basis. It would be impractical and unnecessary to record this activity for Freedom of Information purposes;
- the supply of information leaflets and other reference materials already approved for use by the Trust;

- the provision of information on the current care and treatment to a service user using established practices, for example sharing care plans with the service user as part of normal clinical interactions.

All staff employed by the Trust fall within the scope of this policy.

3. POLICY STATEMENT

The 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 service users, stakeholders, its own employees and the general public. It recognises that improved access to information about the Trust will facilitate the development of such an environment.

The Trust also believes that individuals have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidentiality or statutory provisions that prevent disclosure of personal identifiable information.

4. DUTIES AND RESPONSIBILITIES

The Trust recognises its corporate responsibility under the Act to provide a general right of access to information held.

Chief Executive

Responsible for the Trust's compliance with the Act.

Senior Information Risk Owner

Senior officer at Board level with overall responsibility for this policy, supported by the deputy director of governance and patient experience

Head of Information Governance, Legal Services and Data Protection Officer

Drawing up guidance on Freedom of Information and promoting compliance with this policy. Ensuring staff resources are allocated so that requests are processed in line with the requirements of the Act, including the timely retrieval of information and communicating that information to the applicant.

- Applying the Act to the consideration of whether any of the exemptions apply and involving other senior managers within the Trust where the application of an exemption is not straightforward.
- Maintaining a log of all requests and report on these to the Trust Executive Management Group on a quarterly basis.
- Maintaining the Publication Scheme.
- Ensuring that own skills and knowledge are updated in the area of Freedom of Information Act.
- Monitoring of applicant satisfaction levels on how the request was dealt with.

Managers at all levels

- Ensuring that the staff for whom they are responsible are aware of and adhere to this policy.
- Assisting the head of information governance and legal services by providing information held within their sphere of responsibility within a timely manner.

All Trust staff

- Ensure that they are aware of what constitutes a request under the Act and adheres to this policy.

- Ensure that any requests received are forwarded to via the FOI email address within one working day.
- Be aware that all information which is generated by themselves in a work capacity, including e mails, falls within the remit of the Act and should therefore be written appropriately and in accordance with other Trust policies.

5. PROCEDURES

5.1. Publication Scheme

The Trust's Publication Scheme will be the means by which the Trust makes certain kinds of information routinely available to the public. The Publication Scheme will follow the Information Commissioner's Office model scheme for NHS Trusts and will be available on its website.

The Trust's publication scheme is available to view at: [Publication Scheme \(humber.nhs.uk\)](http://humber.nhs.uk/PublicationScheme)

5.2. Specific Requests for Information

Information not already made available in the Trust's Publication Scheme will be made available through a specific request for information. In this regard the Freedom of Information Act establishes two related rights:

- The right to be told whether the information exists, and
- The right to receive the information (subject to exemptions).

These rights can be exercised by anyone, world-wide and including the Trust's own staff. Requests for information not listed in the Publication Scheme will be dealt with by an appropriate officer identified by the head of information governance and legal services.

Any requests must be made in line with the requirements of the Act in that they must be in a permanent form (for example by completing the Trust's web form or in writing), stating the name of the applicant, an address for correspondence and describing the information requested.

The name of the applicant is required solely for the purposes of responding to the request. The Act is deemed to be "applicant blind" in that the identity of the applicant is of no bearing on how the Trust responds to the request, save where the request may be vexatious. Therefore all information provided under the Act will be deemed to be in the public domain.

Where it is required, the Trust will make every effort to assist the applicant in framing their request and in identifying the information requested. This includes providing help and assistance if the applicant has a disability, sensory impairment, is not literate or whose first language is not English. Therefore although the Act itself states that the request must be in writing, the Trust recognises that could be potentially discriminatory. It will therefore in certain circumstances such as those described above, offer to write down the request and send it to the applicant to confirm that this accurately reflects the information which they have requested. This would also apply, where possible, to framing the response in such a way that it could be understood by the applicant.

The applicant will not be asked the reason for their request, nor will their personal details be revealed without their consent.

The Trust's Communications Department will be informed of any requests which appear to have been submitted by the media as part of the process for dealing with the response.

The head of information governance and legal services will report to the chief executive and the head of corporate affairs, any requests which are deemed to be of a controversial nature or which may potentially impact adversely on the reputation of the Trust.

Applicants will not be entitled to information to which any of the exemptions in the Act applies. However, only those specific pieces of information to which the exemptions applies will be withheld, and information covered by exemptions will be subject to review by the head of information governance and legal services.

The Trust must respond to any request promptly and certainly no later than the twentieth working day following the date of receipt. Further reasonable details can be requested from the applicant in order to identify and locate the information. If a fee is required a period of twenty working days is extended by up to three months until the fee is paid.

Occasionally an applicant will apply simultaneously with the same request (referred to as “round Robin” requests) to a number of NHS Trusts. If it is considered that this is the case, it would be in order for the head of information governance and legal services to approach similar Trusts in the area via the Information Governance Network to establish if this is the case and if so to agree on a consistent approach to responding to the request, specifically in relation to applying any exemptions.

5.3. Exemptions under the Act

There are 23 exemptions under the Act and fall into two classes:

- 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.

The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance would exceed the appropriate limit (currently standing at £450 and established in national fees regulations). The Trust will work with the applicant to keep costs to a minimum but reserves the right to either refuse or charge for the supplying of information that exceeds this limit (see paragraph 5.4 Fees).

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, it is not obliged to comply with an identical or similar subsequent request from the same person unless a reasonable interval has elapsed between the two requests.

The Trust will log all requests for monitoring purposes and to identify repeated or vexatious requests.

5.4. Fees

Unless otherwise specified information made available through the Trust’s Publication Scheme will be free of charge.

All other requests will be free of charge unless answering it would exceed the appropriate limit of £450. When calculating the costs involved, the Trust can take into account the following activities:

- Determining whether the information is held, locating and retrieving it; and
- Extracting the information (including editing).

There will be no charge for search and collation time for the vast majority of requests dealing with a specific request for information not listed in the publication scheme.

The Trust will not take into account the cost of considering whether information is exempt under the Act when deciding if a charge should be made.

Other fees that may be charged are limited to the costs of postage, printing and photocopying.

In cases where the Trust chooses to charge for information a fees notice will be issued to the applicant. 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.

5.5. Non-Public Sector Contracts

When entering into contracts with a non-public authority, the Trust may be under pressure to accept confidentiality clauses. Under such a clause, the non-public authority may require that information relating to the terms of the contract, for example its value and performance, are exempt from disclosure.

The Trust will reject any such clauses wherever possible. Any acceptance of such confidentiality provision must be for good reason and capable of being justified to the Information Commissioner.

However the timing of the disclosure will be of importance. For example, information submitted during a tendering process is more likely to be commercially sensitive whilst the process is ongoing, compared to when the contract has been awarded.

The Trust's contract/tendering documentation will therefore contain the following paragraph:

As a public authority, the Humber Teaching NHS Foundation Trust is subject to the Freedom of Information Act 2000. As part of our duties under the Act, we may be required to disclose information contained in your tender or contract to anyone who makes a request. We may also publish some of the information you give us under the Trust's Publication Scheme, which is a further requirement of the Act. For information to be withheld from an applicant, the information must actively qualify for an exemption under the Act. However before releasing any information, we will consult you and have regard to your comments or objections. If you wish to discuss this matter further, please contact (name and contact details of Freedom of Information Act lead) Freedom of Information Act lead.

5.6. Time Limits for Handling of Requests

The Trust shall have in place procedures to ensure compliance with the duty to confirm or deny and to provide information requested within twenty working days of a request in accordance with the Act.

The period between the fees notice being sent and the fee being paid will not be included in the twenty working days calculation.

If the Trust chooses to apply an exemption to any information or to refuse a request a notice shall be issued to the applicant within twenty working days.

A working day is defined by the Information Commissioner's Office (ICO) as one day within the working week (Monday to Friday).

5.7. Method of Communicating Information

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 is reasonably practicable comply with that preference.

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 decision and will provide the information by such means it deems reasonable in the circumstances.

5.8. Refusal of a Request

As indicated above the Trust can refuse a request if the Trust:

- applies an exemption;
- has issued a fees notice and the fee has not been paid within three months;
- estimates the cost of compliance exceeds the appropriate limit;
- can demonstrate the request is vexatious or repeated.

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. The applicant will be informed of the procedures for making a complaint.

The head of information governance and legal services will ensure authorisation for any response to a request is obtained at the appropriate level before it is sent.

5.9. Complaints

All complaints will be dealt with in accordance with the Trust's Complaints Procedure.

All complainants will be informed of the Trust's Complaints Procedure and also of their right to complain directly to the Information Commissioner should it not be possible to resolve the matter at the initial local resolution stage.

They will be given the Commissioner's details.

5.10. Information about Staff

Occasionally requests will be made for information which includes details of the Trust's own staff. Generally, if the applicant is the subject of the information, these requests will be dealt with under data protection legislation. If the applicant is not the subject of the information, these requests will be dealt with under the Freedom of Information Act.

On receipt of such requests the following will be considered:

- whether the information refers to a member of staff's public or personal life; the seniority of the member of staff;
- whether details about the member of staff can be removed without reducing the value of the information requested;
- whether the member of staff consents to the information being disclosed; whether the member of staff would expect this information to be disclosed; whether disclosure would put the member of staff at risk in any way.

If a departmental structure is requested, including names and contact details, names will only be provided to those members of staff on Band 8 or above.

On appointment to the Trust all new staff will be informed through a Privacy Notice under what circumstances information about themselves would be released under the Freedom of Information Act.

5.11. Monitoring of Requests

The head of information governance and legal services will ensure that all requests are monitored on receipt and their progress logged to ensure compliance with the timescales for responses.

Specific information to be captured will be:

- information about applicants, requests for information and appeals; calculation and recording of fees associated with requests for information;
- monitoring of the workflow process from receipt of application through to the information being provided;
- performance measures with respect to timescales for complying with requests;
- where information was not provided or only partially provided under which exemption criteria this fell;
- monitor applicant satisfaction levels with how the request was dealt with.

5.12. Retention Periods of Requests

Details of requests for information under the Act will be retained in line with the *Records Management Code of Practice for Health and Social Care 2016*:

- three years from closure of the request;
- six years from closure of the appeal where there has been a subsequent appeal.

6. EQUALITY AND DIVERSITY

An Equality and Diversity Impact Assessment has been carried out on this document using the Trust-approved EIA. No adverse impact was identified.

7. IMPLEMENTATION

This policy will be disseminated by the method described in the Policy for the Development and Management of Procedural Documents.

The information governance and legal services manager conducted briefing sessions on the introduction of the Act to senior staff, the Trust Executive Management Group, and other teams within the Trust. These will be repeated as necessary.

Freedom of Information awareness will be covered as part of the general Information Governance Training strategy for the Trust.

The general public will be made aware of their rights to request information through the Trust's internet site. A poster and leaflet campaign in all Trust buildings was conducted following the full implementation of the Act in 2005.

8. MONITORING AND AUDIT

This explains how the policy is to be monitored or audited, and who is responsible for carrying this out, when and how often.

The head of information governance and legal services will:

- Monitor the Trust's compliance with this policy and the Act itself by means of the Requests Log.
- Ensure that the Trust also meets the standards as defined in the Information Governance Toolkit (Requirement 603 "Documented and publicly available procedures are in place to ensure compliance with the Freedom of Information Act 2000).
- Ensure Freedom of Information is included in the Trust Information Governance induction training.
- Provide the Information Governance Committee with a quarterly report on numbers of requests received and the number of days taken to respond.

9. REFERENCES/EVIDENCE/GLOSSARY/DEFINITIONS

Freedom of Information Act 2000

Information Governance Toolkit (Initiative Corporate Information Assurance, Sequence Number 603)

Links with other Trust policies

Caldicott and Data Protection Policy

Records Management and Information Lifecycle Policy

Appendix 1: Equality Impact Assessment (EIA)

For strategies, policies, procedures, processes, guidelines, protocols, tenders, services

1. **Document or Process or Service Name:** Freedom of Information Policy
2. **EIA Reviewer (name, job title, base and contact details):** Lisa Davies, Head of Information Governance and Legal Services, Mary Seacole Building, 01482 477840
3. **Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other?** Policy

<p>Main Aims of the Document, Process or Service</p> <p>The Freedom of Information Act 2000 provides a right of access to information held by public bodies. The Act was fully implemented in January 2005. There is a legal requirement for the Trust to comply with the Act and the policy describes how we will meet this requirement.</p>
<p>Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the pro forma</p>

<p>Equality Target Group</p> <ol style="list-style-type: none"> 1. Age 2. Disability 3. Sex 4. Marriage/Civil Partnership 5. Pregnancy/Maternity 6. Race 7. Religion/Belief 8. Sexual Orientation 9. Gender Reassignment 	<p>Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed?</p> <p>Equality Impact Score</p> <p>Low = Little or No evidence or concern (Green)</p> <p>Medium = some evidence or concern (Amber)</p> <p>High = significant evidence or concern (Red)</p>	<p>How have you arrived at the equality impact score?</p> <ol style="list-style-type: none"> a) who have you consulted with b) what have they said c) what information or data have you used d) where are the gaps in your analysis e) how will your document/process or service promote equality and diversity good practice
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Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Age	<p>Including specific ages and age groups:</p> <p>Older people Young people Children Early years</p>	Low	<ul style="list-style-type: none"> • Lord Chancellor's Code of Practice • Best Practice Guidance provided by the Information Commissioner's Office. • Review of quarterly reports to the Information Governance Committee for SIs, Adverse incidents. PALS & Complaints received, IG Issues Log, FOI requests received. <p>The Act itself states that the request must be in writing. The Trust recognises this could be potentially discriminatory. The policy therefore describes the circumstances in which an offer will be made to write down the request and send it to the applicant to confirm that this accurately reflects the information that they have requested. This will follow the Trust's policies for communicating with service users and others who are unable to understand English as a first language are non-literate or lack capacity.</p>

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
			A Satisfaction Questionnaire is provided to each applicant with the response to their request which would provide the applicant the opportunity to highlight any issues of impact they wished to raise.
Disability	Where the impairment has a substantial and long term adverse effect on the ability of the person to carry out their day to day activities: Sensory Physical Learning Mental Health (including cancer, HIV, multiple sclerosis)	Low	As above The Trust accepts emailed FOI/completion of web form requests as being "in writing" (providing the request gives the identity of the applicant) recognising that this form of communication may be easier for applicants with a disability.
Sex	Men/Male Women/Female	Low	As above
Marriage/Civil Partnership		Low	As above
Pregnancy/Maternity		Low	As above
Race	Colour Nationality Ethnic/national origins	Low	As above
Religion or Belief	All religions Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	As above
Sexual Orientation	Lesbian Gay Men Bisexual	Low	As above
Gender Reassignment	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	Low	As above

Summary

Please describe the main points/actions arising from your assessment that supports your decision above	
There is no evidence of potentially negative effect on groups in the categories above.	
The policy is compliant with the requirements of the Freedom of Information Act 2000 and the Lord Chancellor's Code of Practice which accompanies the Act.	
There is a quarterly summary report to the Information Governance Committee which includes any SIs, Adverse incidents, PALS/Complaints or issues raised via the IG Issues Log for anything with an information governance/data protection of FOI aspect. Therefore anything that demonstrated there had been an adverse equality impact would be picked up through that process.	
The FOI Act does itself require that requests are submitted in writing. The policy contains a description of the circumstances where assistance can be given where this would cause anyone particular difficulty.	
EIA Reviewer: Lisa Davies	
Date completed: 21 September 2022	Signature: Lisa Davies

Appendix 2: Document Control Sheet

This document control sheet, when presented to an approving committee must be completed in full to provide assurance to the approving committee.

Document Type	Policy and Procedure		
Document Purpose	The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 are adhered to.		
Consultation/ Peer Review:	Date:	Group / Individual	
<i>List in right hand columns consultation groups and dates</i>		Caldicott and Data Protection Officer Head of Procurement Head of Public Relations Complaints and PALS Manager Information Governance	
Approving Committee:		Date of Approval:	9 November 2016
Ratified at:	Information Governance Group	Date of Ratification:	10 September 2019
Training Needs Analysis: <i>(please indicate training required and the timescale for providing assurance to the approving committee that this has been delivered)</i>	None	Financial Resource Impact	None
Equality Impact Assessment undertaken?	Yes []	No []	N/A [] Rationale:
Publication and Dissemination	Intranet [<input checked="" type="checkbox"/>]	Internet []	Staff Email [<input checked="" type="checkbox"/>]
Master version held by:	Author []	HealthAssure [<input checked="" type="checkbox"/>]	
Implementation:	<i>Describe implementation plans below - to be delivered by the Author:</i>		
	<p>This policy will be disseminated by the method described in the Policy for the Development and Management of Procedural Documents.</p> <p>The Information Governance and Legal Services Manager conducted briefing sessions on the introduction of the Act to senior staff, the Trust Executive Management Group, and other teams within the Trust. These will be repeated as necessary.</p> <p>Freedom of Information awareness will be covered as part of the general Information Governance Training strategy for the Trust.</p> <p>The general public will be made aware of their rights to request information through the Trust's internet site. A poster and leaflet campaign in all Trust buildings was conducted following the full implementation of the Act in 2005.</p>		
Monitoring and Compliance:	<p>The Head of Information Governance and Legal Services will:</p> <ul style="list-style-type: none"> • Monitor the Trust's compliance with this policy and the Act itself by means of the Requests Log. • Ensure that the Trust also meets the standards as defined in the Information Governance Toolkit (Requirement 603 "Documented and publicly available procedures are in place to ensure compliance with the Freedom of Information Act 2000). • Ensure Freedom of Information is included in the Trust Information Governance induction training. • Provide the Information Governance Committee with a quarterly report on numbers of requests received and the number of days taken to respond. 		

Document Change History:			
<i>Version Number / Name of procedural document this supersedes</i>	<i>Type of Change i.e. Review / Legislation</i>	<i>Date</i>	<i>Details of Change and approving group or Executive Lead (if done outside of the formal revision process)</i>
3.07	Review	12/4/10	Ratified.
3.08	Review	11/6/12	Change of job title (to IG and Legal Services Manager) Change Public Relations Department to Communications Dept. Para 5.2 delete reference to SHA Para 5.10 addition, requests for structures will only include names and contacts at Band 8 and above
3.09	Review	01/11/16	Changes in Job Titles Para 5.8 change ensure authorization for application of an exemption to authorisation for response. Para 5.12 Changes in the retention periods for FOI requests have been recommended in the revised Records Management NHS Code of Practice for Health and Social Care 2016.
3.10	Review	Sept 2018	Update references to Data Protection Act 2018 and General Data Protection Regulation.
3.11	Review	August 2019	Change of title from Head of Corporate Information to Head of Information Governance and Legal Services. Reference that FOI requests can be made via the Trust's online web form.
3.12	Review	September 2022	Inserting a link to the Trust's FOI publication scheme. Inclusion of the ICO definition for 'one working day'. Review of charges payable for FOI requests. Approved at IG Group (21/09/22).