



FREEDOM OF INFORMATION POLICY

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1 INTRODUCTION

The Freedom of Information Act (FOI) 2000 is part of the Government's commitment to greater openness in the public sector. It enables members of the public to question the decisions of public authorities more closely and ensure that the services provided are efficiently and properly delivered. The Act replaces the non-statutory "Code of Practice on Openness in the NHS".

The main features of the Act are:

- A general right of access to recorded information held by City Hospitals Sunderland NHS Foundation Trust (the Trust) subject to certain conditions and exemptions.
- In cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on the Trust to:
 - inform the applicant whether they hold the information requested; and
 - communicate the information to the applicant unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.
- A duty on the Trust to adopt and maintain a Publication Scheme.

2 PURPOSE AND SCOPE

The purpose of this policy is to:

- Identify and detail the roles and responsibilities associated with FOI throughout the Trust; and
- Provide a framework within which the Trust will comply with the law and ensure that non-confidential information is readily available to the public.

The policy applies to:

- All employees of the Trust, including but not limited to permanent, temporary, NHS Professionals, contract, honorary and volunteer staff, and all other persons carrying out any function or work on behalf of the Trust.
- All recorded information held by the Trust, whether electronic or on paper

The policy does not apply to personal data, which falls under the Data Protection Act.

3 DUTIES & RESPONSIBILITIES

3.1 Board of Directors

The Board of Directors is responsible for monitoring and approving a framework to support the governance of Freedom of Information, which is compliant with all relevant legislation and guidelines.

3.2 Chief Executive

The Chief Executive has ultimate responsibility for ensuring that a framework is in place to support the effective management of Freedom of Information and ensuring that this is compliant with all relevant legislation and guidelines.

3.3 Director of Corporate Affairs & Legal

The Director of Corporate Affairs and Legal is the nominated Director lead for Freedom of Information within the Trust and has responsibility for ensuring appropriate systems are in place for managing Freedom of Information and for the implementation and management of this policy.

3.4 Senior Information Risk Owner (SIRO)

The SIRO has responsibility at Board level for providing focus for assessment and management of information risk. The SIRO is supported by appropriately trained individuals within the Trust.

The SIRO has responsibility for:

- Providing briefings and reports on matters of performance, assurance and cultural impact.
- Familiarity with information risks and their mitigation, including information risk assessment methodology.

3.5 Caldicott Guardian

The Caldicott Guardian is responsible for safeguarding and governing uses of patient information within the Trust, as well as data flows to other NHS and non-NHS organisations, supported by appropriately trained individuals within the Trust.

The Caldicott Guardian has responsibility for:

- The establishment of procedures governing access to, and the use of, person-identifiable patient information and, where appropriate, the transfer of that information to other bodies.
- Taking account of the codes of conduct provided by professional bodies, and guidance on the protection and use of patient information, and on IM&T security disseminated by the Department of Health, including the NHS Confidentiality Code of Practice.

3.6 Deputy Head of Corporate Affairs

The Deputy Head of Corporate Affairs has responsibility for:

- Day-to-day management of all FOI requests and responses;
- Maintaining a record of all FOI requests and responses;
- Monitoring compliance with FOI time limits and escalation to the Director of Corporate Affairs and Legal, as well as and other relevant directors, in the event of continued breaches by individuals and/or departments; and

- Ensuring any requests and associated responses which may be contentious are brought to the attention of the Director of Corporate Affairs and Legal and other relevant directors.
- Ensuring the Trust's Publication Scheme is updated annually.

3.7 Data Protection Lead

The Data Protection Lead has responsibility for:

- Ensuring that the Trust complies with the Data Protection Act 1998, supported by appropriately trained individuals within the Trust.
- Ensuring that employees are fully informed of their own responsibilities for acting within the law.
- Ensuring that the public, including employees, are informed of their rights under the Act.
- Providing comprehensive reports to the Board on the Trust's compliance with the Data Protection Act and related provisions.
- Co-ordinating Data Protection Act activities and attending such information governance group meetings as necessary.
- Ensuring organisational compliance, and conformance with the Data Protection Principles.

3.8 Information Asset Owners (IAOs)

IAOs are responsible for providing assurance to the SIRO on the security and use of information assets throughout the Trust, supported by appropriately trained individuals within the Trust.

IAOs have responsibilities which include:

- Understanding and addressing risks to the information assets they 'own'.
- Leading and fostering a culture that values, protects and uses information for the success of the Trust and benefit of its patients.
- Knowing who has access and why, and ensures their use is monitored and compliant with policy.
- Conducting reviews of information risk in relation to 'owned' assets, and providing an annual written risk assessment to the SIRO for all assets 'owned' by them.

3.9 Executive Committee Member

Executive Committee members are responsible for ensuring their teams understand the importance of supporting the Trust's Freedom of Information duties. They are also responsible for agreeing and implementing plans within their teams to address outstanding information requests as notified by the Corporate Affairs Department.

3.10 Managers

Managers are responsible for implementing the policy within their business areas, and for adherence to the policy by their staff. They should have due regard to FOI requirements when implementing work processes within their areas and departments. They should also ensure their staff are made aware of responsibilities with regard to supporting the Department of Corporate Affairs when dealing with requests, particularly noting the timescales which need to be adhered to.

3.11 All Staff

All staff must comply with this and associated policies. They should ensure:

- Any requests for information received directly from an applicant are forwarded to the Deputy Head of Corporate Affairs for action; and
- Any request for information received from the Corporate Affairs Department which is needed in order to complete a FOI response must be dealt with in 5 working days, seeking clarification if the request is unclear or advising if the timescale will not be achievable in order that an extension can be agreed with the applicant or, if appropriate, the relevant exemption can be applied.

4 DEFINITIONS

- 4.1 Absolute exemption:** Information that does not have to be released to an applicant either through the publication scheme or in response to a request for information.
- 4.2 Applicant:** Individual(s) or bodies requesting access to information under the FOI Act.
- 4.3 Duty to confirm or deny:** Duty of the Trust to provide information as to whether it holds information specified in a request.
- 4.4 Fees Notice:** Written notification issued to an applicant stating that a fee for release of the requested information is payable.
- 4.5 Fees Regulations:** National regulations prohibiting a fee with regard to certain types of information; and which limit charges which the Trust may impose.
- 4.6 General right of access:** Section 1 of the FOI Act confers a general right of access to information held by public authorities. An applicant has the right to be told whether the Trust holds information requested, and be provided with a copy of the information unless an exemption applies.
- 4.7 Information Commissioner:** Individual appointed by the Crown who has responsibility for overseeing and enforcing the application of the Data Protection Act 1998 and Freedom of information Act 2000.
- 4.8 Public authority:** Any Trusts identified in Schedule 1 of the FOI Act.

4.9 Publication Scheme: Scheme specifying the classes of information which a public authority publishes or intends to publish.

4.10 Qualified Exemption: Information to which an exemption applies that requires the Trust to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure.

5 FREEDOM OF INFORMATION ACT

5.1 Publication Scheme

To comply with the FOI Act the Trust must have a publication scheme which sets out the following:

- the classes of information published, or intended to be published;
- the manner in which publication is, or is intended to be made; and
- whether the information is available free of charge or if payment is required.

The Trust's publication scheme is available on the Trust's website and will be regularly reviewed and updated to ensure accuracy of the information contained within it.

5.2 Responding to Requests

- All requests for information made under the Terms of the FOI Act should be directed to the Department of Corporate Affairs. It is acknowledged that the Trust regularly receives requests for information from partner organisations and agencies, for example, Commissioners etc and these should continue to be dealt with by the most appropriate operational or corporate team.
- The Trust should respond to all FOI requests within the legal deadline of 20 working days.
- The Trust will not assume or interpret an applicant's intentions or motivations, and will reply to requests honestly and without prejudice, seeking clarification if necessary.
- Where the Trust does not hold part or all of the information requested:
 - this fact will be communicated to the applicant promptly and in any event within the 20 working days timescale; and
 - the Trust shall not normally transfer requests directly to other public bodies, but shall instead inform the applicant of the likely body which holds the information, if known.
- Where a request is known to have been circulated to many public bodies, affects services jointly owned with other organisations, or which may otherwise be deemed to have significant implications at a regional or national level:

- the Trust may consult with other public bodies to identify any efficiencies which may be created by sharing information in regard to responses; and
 - the Trust's duty to respond to the request cannot be shared with or discharged by other organisations, and the Trust will respond to each request within its own powers.
- Where the Trust decides to apply an exemption, the decision will be justified and recorded. For qualified exemptions this shall include an assessment of the public interests in disclosure or non-disclosure. The full list of exemptions as set out in the Act can be found in **Appendix 1**.
 - In all cases the Trust shall make all reasonable efforts to assist the applicant in obtaining the information requested.

5.3 Charges and Fees

The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying on to alternative media. The Publication Scheme and the procedures that support this policy provide further guidance on charging.

The Trust will follow the National Fees Regulations for general rights of access under the Act. These have set an appropriate limit on the costs of compliance, the manner in which an appropriate fee may be levied and the circumstances under which no fee should be levied. At present the appropriate fee limit for NHS Trusts is £450.

5.4 Consultation with Third Parties

In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where the information is subject to the common law duty of confidence or where it constitutes "personal data" as defined by the Data Protection Act 1998. Unless an exemption applies in relation to any particular information, the Trust will be obliged to disclose the information in response to a request.

Where information has been obtained from a third party and in the circumstances disclosure of the information without their consent would constitute an actionable breach of confidence, such that an exemption at Section 41 of the FOI Act would apply, the Trust will consult with the third party to seek consent, unless such consultation is not practicable (for example, because the third party cannot be located or because the cost of consulting them would be disproportionate). Where third party interests are affected by a disclosure but do not give rise to legal rights, consultation may still be appropriate.

The Trust will undertake consultation where:

- The views of the third party may assist the Trust in determining whether an exemption under the Act applies, or
- The views of the third party may assist the Trust in determining where the Public interest lies.

The Trust may consider that consultation is not appropriate where the cost of consulting with the third party would be disproportionate. In such cases the Trust will consider the most reasonable action to take in light of the requirements of the Act. Consultation will be unnecessary where:

- The Trust does not intend to disclose the information, relying on legitimate grounds under the terms of the FOI Act.
- The views of the third party can have no effect on the decision as to whether to disclose, eg where there is other legislation preventing or requiring the disclosure.
- No exemption applies.

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

A refusal to consent to disclosure by a third party does not mean information should be withheld from the applicant.

5.5 Public Sector Contracts

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.

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. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor.

5.6 Complaints/Appeals

All complaints about the discharge of the Trust's duties under the FOI Act will be handled in the same manner and using the same procedures as any other complaint against the Trust and its services.

Where an applicant remains dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint via the Complaints Department, they will be directed to apply to the Information Commissioner in line with their right under section 50 of the FOI Act.

6. MONITORING COMPLIANCE/EFFECTIVENESS OF THE POLICY

Area for Monitoring	Method	Frequency	Responsibility	Monitoring Assurance Group	Lead for Development of Action Plan	Group Responsible for Monitoring Action Plan
100 % of requests responded to within 20 working days	Audit of FOI database	Monthly	Deputy Head of Corporate Affairs	Information Governance Steering Group	Director of Corporate Affairs & Legal	Corporate Governance Steering Group
Outstanding information to Corporate Affairs Department	Audit of FOI database	Weekly	Deputy Head of Corporate Affairs	Information Governance Steering Group	Relevant Executive Committee Member	Corporate Governance Steering Group
Number of FOI requests received, number responded to within 20 working days, by applicant type	Audit of FOI database	Annually	Deputy Head of Corporate Affairs	Information Governance Steering Group Corporate Governance Steering Group	Director of Corporate Affairs & Legal	Corporate Governance Steering Group

7. DISSEMINATION, IMPLEMENTATION AND TRAINING

7.1 Dissemination and Implementation

The Director of Corporate Affairs and Legal, who has delegated responsibility for compliance with the FOI Act from the Chief Executive, will oversee the implementation of this policy. The Deputy Head of Corporate Affairs will establish systems and procedures that will support the implementation of this policy.

7.2 Training

The Director of Corporate Affairs and Legal will ensure that training on the Act is available to all relevant staff within the Department of Corporate Affairs.

For all other staff, key aspects of the Act is covered during the Information Governance session of the Trust's induction and is also included in the annual Information Governance mandatory training e-learning programme. In addition, awareness of FOI will also be maintained through the Trust's internal communications systems.

8 CONSULTATION, REVIEW AND APPROVAL/RATIFICATION

8.1 Consultation

- Procurement Team
- Information Governance Group
- Corporate Governance Steering Group

8.2 Review

Every three years.

8.3 Approval / Ratification

- Executive Committee – Approval
- Policy Committee - Ratification

9 REFERENCES

- Data Protection Act 1998
- Freedom of Information Act 2000
- NHS Confidentiality Code of Practice
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

10 ASSOCIATED DOCUMENTATION

- Acceptable use of the Internet and Email Policy
- Confidentiality Policy
- Data Protection and Personal Information Handling Policy
- FOI Act 2000 – Operational Procedures for Information Requests
- IM&T Security Policy
- Trust Publication Scheme

Exempt Information under Part 2 of the Act

There are two types of class exemption identified within the Freedom of Information Act 2000:

- (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 or 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 in itself would disclose information that it is reasonable to withhold.

Absolute Exemptions:

Section 21: Information accessible to the 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 (House of Commons or Lords Information)

Section 40: Personal Information (where disclosure would contravene the DPA 1998)

Section 41: Information provided in confidence

Section 44: Prohibitions on disclosure

Qualified Exemptions:

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 (all public authorities except Houses of Parliament)

Section 37: Communications with Her Majesty and Royal Household

Section 38: Health and safety

Section 39: Environmental information

Section 42: Legal professional privilege

Section 43: Commercial interests