

Freedom of Information Act and Environmental Information Regulations Policy

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CLASSIFICATION:	Governance
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<ul style="list-style-type: none"> • Essential Reading for: • Information for: 	<p>All Directors, Senior Managers and Department Heads</p> <p>All Staff</p>

¹ If this Controlled Document will have an impact on any contracts held by the Trust, once approved, this will need to be sent to the Procurement Team requesting that it be added to the Procurement Policy Portal.

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1. Policy Statement

- 1.1. The Freedom of Information Act and Environmental Information Regulations Policy (the “FOI and EIR Policy”) sets out the framework for University Hospitals Birmingham NHS Foundation Trust (the ‘Trust’) to comply with the Freedom of Information Act (FOI) 2000 and Environmental Information Regulations (EIR) 2004.
- 1.2. The aims of this Policy are to:
 - 1.2.1. Ensure all FOI and EIR requests are dealt with consistently and within the timescales given under the relevant legislation;
 - 1.2.2. Ensure that the FOI Publication Scheme is up to date and inclusive in order to provide access to information and to lessen the number of written requests and impact on the service; and
 - 1.2.3. Ensure that staff all levels are aware of their responsibilities with regards to the FOI and EIR Acts.
- 1.3. This policy is supported by local documentation and the FOI Publication Scheme as published on the Trust’s internet website.

2. Scope

- 2.1. This policy applies to all areas of the Trust and all individuals employed by the Trust including contractors, bank staff, volunteers, students, locum and agency staff and staff employed on honorary contracts.
- 2.2. It applies to all information held by the Trust in any format, including, but not limited to, written recordings, notes of telephone calls, file notes, reports, minutes of meetings, emails.
- 2.3. The FOI covers all recorded information held by the Trust. It is not limited to official documents and includes, but is not limited to, drafts, emails, notes, recordings of telephone conversations and CCTV recordings.

3. Framework

- 3.1. This section describes the broad framework for this policy. Detailed instructions are provided in the local documentation procedure. The procedure may be amended from time to time by authority of the Director of Corporate Affairs, provided that such amendments are compliant with this policy.
- 3.2. The framework is split into four sections: Definitions, FOI requests, FOI Publication Scheme and EIR requests.

3.3. Definitions

Data Protection Legislation	The EU General Data Protection Regulation 2016, Data Protection Act 2018 and all applicable law concerning privacy, confidentiality and the processing of personal data.
Public Interest Test	Weighing up whether the public interest in disclosing information outweighs the public interest in withholding the information.
Publication Scheme	A list of information that should be routinely published via the Trust's website. The Trust adheres to the Information Commissioner's Office (ICO) Model Publication Scheme for Health organisations.
Right of access	Any person making a request for information to the Trust is entitled to be informed in writing by the Trust whether it holds information of the description specified in the request and if that is the case, to have that information communicated to him (subject to the relevant Exemptions).

3.4. **Information Governance Team/FOI Leads**

- 3.4.1. All FOI requests will be managed and monitored by the Information Governance team on the Trust's behalf and provide oversight, and advice on the implementation of this policy.
- 3.4.2. Upon receipt of an FOI request, the FOI Co-ordinator will identify and liaise with the FOI Leads.
- 3.4.3. Members of staff appointed as FOI Leads will be nominated by Directors within all departments. The FOI Lead will be responsible for responding to information requests from the FOI Co-ordinator in a timely manner and to escalate appropriately where delays are identified.
- 3.4.4. The Health Informatics team will also be contacted for prompt assistance as and when required to ensure compliance with the statutory time limits under the FOI and EIR regulations.

3.5. FOI Requests

3.5.1. *Receipt of Requests*

- 3.5.1.1. Any member of the public can request information under the FOI Act without the need to give a reason for the request.
- 3.5.1.2. Any member of staff who receives an FOI request should forward it to the FOI team through the FOI inbox (foi@uhb.nhs.uk) without any undue delay. Where the request is received in paper format, the request is to be scanned and emailed, where possible, and otherwise sent by internal post immediately to the FOI Co-ordinator.
- 3.5.1.3. The request must be in writing, state the name of the applicant, provide an address for correspondence (this can include an email address) and describe the information requested.
- 3.5.1.4. The Act does not specify that the person making the request needs to mention the FOI Act for it to be classed as an FOI request.
- 3.5.1.5. Staff should be aware that requests for routine correspondence, recruitment brochures and press releases, for example, can be provided as usual and should not be treated as FOI requests.
- 3.5.1.6. Requests by an applicant for their own personal information as defined by Data Protection Legislation and medical records will not be disclosed under this Policy. Please refer to the associated Data Protection and Confidentiality Policy, Subject Access Request Procedures and the Trust website.

3.5.2. *Response to Requests*

- 3.5.2.1. The Trust is required to respond to all information requests within 20 working days from the date the request was received by the Trust.
- 3.5.2.2. The Trust will respond in the applicant's preferred format, where possible, and the Trust will respond to all requests from persons with a disability in a manner appropriate to their needs.
- 3.5.2.3. Staff should not respond directly to FOI requests from members of the public unless the information requested is already available in the public domain, for example in patient leaflets. All other responses will be sent by the

FOI Co-ordinator once it has been approved by the appropriate individual.

3.5.2.4. The FOI Co-ordinator will contact appointed staff (known as FOI Leads) as well as members of the Health Informatics Team, as appropriate, to determine whether the requested information is held by the Trust and whether any exemptions might apply. Any information requested must be provided in a timely manner to ensure compliance with the aforementioned timeframe.

3.5.2.5. The FOI Co-ordinator will keep a register of all requests received/ responded to.

3.5.3. Exemptions

3.5.3.1. Information must be provided unless any of the exemptions under the FOI Act apply. The final decision as to the applicability of an exemption lies with the Information Governance Team, however the FOI Lead is required to provide a case for using the exemption.

3.5.3.2. Exemptions can be either **absolute** or **qualified**. **Absolute exemptions** are those where information can be withheld without the need to consider the Public Interest Test (see below). In relation to **Qualified exemptions**, the Trust has a duty to consider whether disclosure is required in the public interest. To withhold information, the public interest in applying the exemption must outweigh the public interest in disclosure. If the two are evenly balanced, the information must be disclosed.

3.5.3.3. The following exemptions are those which may be relied upon by the Trust. This list is not exhaustive and further information can be obtained from the ICO website (www.ico.gov.uk/for_organisations.aspx), the Freedom of Information and Environmental Information Regulation Procedure and the Information Governance team:

- Section 12: Cost exemption (see below);
- Section 21: Information reasonably accessible by other means (absolute exemption);
- Section 22: Information intended for future publication (qualified exemption);

- Section 40: Information that constitutes personal data (absolute exemption);
- Section 41: Disclosures that would constitute an actionable breach of confidence (absolute exemption);
- Section 43: Commercial Interest (qualified exemption).

3.5.4. *Costs and Disbursements*

3.5.4.1. If it is estimated that the cost of determining that it holds relevant information, locating and retrieving and, where necessary, extracting the information from the document will exceed the cost limit of £450 (18 hours work), the Trust is not obliged to comply with the request. Where the cost limit is exceeded, the Trust is under a duty to advise and assist the applicant to narrow the request such that it can be dealt with within the cost limit if possible.

3.5.5. *Vexatious Requests*

The Trust can refuse to comply with a request where the request is considered vexatious or a repeated request. A vexatious request is likely to cause unjustified distress, disruption or irritation. A repeated request is one made by the same person as a previous request; is identical or substantially similar to the previous request; and has been made without a reasonable interval elapsing since the previous request. The use of exemption must be approved by the Information Governance Lead.

3.5.6. *Consultation with Third Parties*

Where the interest of a third party may be affected by the disclosure, the Trust will consult with that party, where appropriate. The use of this is usually in relation to Section 43 Commercial Interests (qualified exemption).

3.5.7. *Requests for Review*

3.5.7.1. If the applicant wishes to ask for an internal review of the information provided, or of the decision to exempt some or all of the information, then the request should

be made in writing to the Information Governance Team.

3.5.7.2. This review will be conducted by the Director of Corporate Affairs, or a Trust Manager appointed by the Director of Corporate Affairs. The appointed member of staff must not have been involved in the initial decision-making process. If applicants remain unsatisfied, they have the right to appeal to the Information Commissioner.

3.6. FOI Publication Scheme

3.6.1. The Trust must adopt an approved Publication Scheme. The Publication Scheme requires the Trust to make certain kinds of information routinely available to the public.

3.6.2. The Trust's Publication Scheme is available on the intranet: <http://www.uhb.nhs.uk/publication-scheme.htm>

and

<http://www.heartofengland.nhs.uk/freedom-of-information-act/publication-scheme/>

3.6.3. The Trust has categorised its information into 7 classes, namely:

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

3.6.4. The publication scheme is overseen by the Information Governance Team.

3.6.5. Department Heads are responsible for their departmental information and ensuring it is published and updated on the Trust website in an appropriate location.

3.7. EIR Requests

3.7.1. The Environmental Information Regulations 2004 (EIR) give rights of public access to environmental information held by the Trust. Environmental information is any information on – that is, about, concerning, or relating to the various definitions contained in Regulation 2(1) of the EIR.

3.7.2. EIR requests are dealt with in the same manner as FOI requests unless stated otherwise.

3.7.3. *Receipt of Requests*

An EIR request can be made by letter, email and, unlike FOI requests, by telephone or in person.

3.7.4. *Response to requests*

The Trust is under a duty to make available requested information within 20 working days, commencing from the date the request was received by the Trust, unless the Trust reasonably believes that it is impractical to answer the request in that timescale due to its complexity and volume, in which event the Trust may take up to 40 days to provide the information.

3.7.5. *Exceptions*

Under the EIR there is an express presumption in favour of disclosure. However, the Trust can refuse to disclose the information if it would adversely affect the following matters:

- International relations, defence, national security or public safety;
- The course of justice, ability of a person to receive a fair trial, or ability of the Trust to conduct a criminal or disciplinary inquiry;
- Intellectual property rights;
- The confidentiality or proceedings of the Trust where such confidentiality is protected by law.

Please note that this is not a complete list.

3.7.6. *Costs and disbursements*

Under the EIR there is no cost limit beyond which the information request need not be answered. There is also no provision dealing with the levels of fees or charges. The EIR states that a charge may not exceed “an amount which [the Trust] is satisfied is a reasonable amount.”

4. Duties

4.1. Director of Corporate Affairs

The Director of Corporate Affairs is responsible for Information Governance for the Trust and will:

- 4.1.1. Report to the Board on FOI requests;
- 4.1.2. Ensure Trust local documentation and processes are in place to comply with the FOI Act and EIR;
- 4.1.3. Process appeals and internal reviews; and
- 4.1.4. Sign off the FOI Publication Scheme.

4.2. Director of Communications

The Director of Communications is responsible for the approval of FOI responses before they are sent to the requestor. This duty may be delegated from time to time to the Deputy Foundation Secretary or the Information Governance Lead.

4.3. Deputy Foundation Secretary

The Deputy Foundation Secretary is responsible for overseeing Trust compliance with the FOI Act and EIR. The Deputy Foundation Secretary may also approve FOI responses as delegated by the Director of Communications.

4.4. FOI Leads

FOI Leads are responsible for:

- 4.4.1. Except for when requesting the use of an exemption, providing the information requested within the timeframes required and in a way fit to be placed in the public domain,
- 4.4.2. Providing clear justification for requesting the use of an exemption by the Information Governance Team; and
- 4.4.3. Reviewing information provided and published under the FOI Publication Scheme annually, or more frequently as required, and

to advise the Information Governance Team of any necessary changes.

4.5. Health Informatics Team

The Health Informatics team are responsible for providing prompt advice and assistance as and when required by the Information Governance Team and FOI Leads in relation to information held in the Trust's systems.

4.6. Information Governance Group

Members of the Information Governance Group receive assurance that FOI programme is in place.

4.7. Information Governance Lead

The Information Governance Lead is responsible for:

- 4.7.1. Day-to-day responsibility all aspects of FOI;
- 4.7.2. Reviewing FOI complaints and internal reviews;
- 4.7.3. Advising all staff on issues relating to FOI; and
- 4.7.4. Approving FOI responses as delegated by the Director of Communications.
- 4.7.5. Approving the use of exemptions

4.8. FOI Co-ordinator

The FOI Co-ordinator is responsible for:

- 4.8.1. Handling, registering and responding to requests under the FOI Act and EIR in conjunction with FOI Leads; and
- 4.8.2. Maintaining an up to date FOI Publication Scheme.

4.9. All Staff

It is the responsibility of all staff to:

- 4.9.1. Consider potential FOI and EIR requests when creating corporate information (e.g. contracts, Board papers).
- 4.9.2. Forward any FOI and EIR-related requests to the FOI Co-ordinator by email immediately following receipt of any request.

These are to be sent to Information Governance Team FOI inbox (foi@uhb.nhs.uk);

- 4.9.3. When required, assist the FOI Co-ordinator/FOI Leads in responding to a request, to provide the necessary information in a timely manner and in a state in which it is fit to be placed in the public domain; and
- 4.9.4. Adhere to the principles and standards set out in this document and any associated procedural documentation, namely the FOI and EIR Procedure.

5. Implementation and Monitoring

Implementation

- 5.1. All Trust staff will be made aware of their responsibilities under this Policy.
- 5.2. FOI Leads will be provided with training to undertake their role by the Information Governance team.
- 5.3. The policy will be published as a Controlled Document on the Trust's intranet.

Monitoring

Appendix A provides full details on how this policy will be monitored by the Trust.

6. References

The Trust's Freedom of Information arrangements take into account statutory arrangements and good practice, including:

Freedom of Information Act 2000

Environmental Information Regulations 2004

Data Protection Act 2018

EU General Data Protection Regulation (Regulation (EU) 2016/679)

Department of Health: Records Management Code of Practice 2016

7. Associated Policy and Procedural Documentation

Records Management Policy

Data Protection, Confidentiality and Disclosure Policy

Subject Access Request Procedure

Appendix A

Monitoring Matrix

MONITORING OF IMPLEMENTATION	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
Compliance with policy	Deputy Foundation Secretary	Audit Committee	Report on compliance	Annual
Log of requests	Information Governance Lead	Information Governance Group	Monitoring of FOI Scheme, including number of requests received; complied with; exemptions applied, and number of breaches.	6-monthly