

Freedom of Information Policy

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Services	Applicable to
Trustwide	√
Mental Health and LD	
Community Health Services	

Version Control Summary

Version	Date	Author	Status	Comment
1.0	November 2004	Clinical Records Development Manager	Final	Based on national exemplar policy with adaptation for locally agreed procedures
1.1	January 2009	Clinical Records Development Manager	Final	Renewed following consultation with Information Governance Steering Group, FOI leads and Health Records Development Group
1.2	January 2012	Head of Information Governance	Final	Information Governance Toolkit requirements incorporated into policy
1.3	March 2015	Head of Information Governance	Final	Policy review
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1.5	July 2021	Information Governance Manager	Final	Policy review

Contents

Paragraph		Page
1.0	Introduction	4
2.0	Purpose	4
3.0	Duties	4
4.0	Freedom of Information Act	5
4.1	General right of access	5
4.2	Publication Scheme	5
4.3	Disclosure log	6
4.4	Duty to provide advice and assistance	6
4.5	Duty to confirm or deny	6
4.6	Time limits for compliance with requests	6
4.7	Charges and fees	7
4.8	Methods of providing information	7
4.9	Refusal of requests	7
4.10	Exemptions	8
4.11	Vexatious or repeated requests	8
4.12	Identity of the applicant and reasons for the request	9
4.13	Round robin requests	9
4.14	Transferring requests for information	10
4.15	Third parties	10
4.16	Contracts	10
4.17	Internal review process	11
4.18	Records management	11
Appendix 1	List of exemptions	13

1.0 Introduction

Public authorities have a legal obligation to ensure the provisions of the [Freedom of Information Act 2000](#) and the [Environmental Information Regulations 2004](#) are met. Both have been in force since 1st January 2005 with the intention of promoting greater openness, providing increased transparency of decision making and building public trust and confidence. Both give the public a general right of access to all types of recorded information held by public authorities, including the National Health Service.

2.0 Purpose

This policy sets out how the Trust meets its obligations in respect of the Freedom of Information Act 2000 and associated codes of practice, in particular the Lord Chancellor's [Code of Practice](#) on records management under Section 46 of the Act, and the Environmental Information Regulations 2004.

Whilst this policy refers essentially to the Freedom of Information Act 2000 (the Act), the principles and standards should also generally be applied to the Environmental Information Regulations 2004 (EIR). Specific advice on EIR should be sought from the Data Protection Officer.

3.0 Duties

3.1 All individuals

All individuals including temporary and permanent staff, contractors, students, volunteers and non-executive directors must adhere to this policy. Failure to do so may result in disciplinary action.

All individuals must immediately forward any Freedom of Information requests (whether or not explicitly identified as such) to the Information Governance team to ensure compliance with the 20 working day deadline required under the Act.

All individuals must provide their local FOI lead with the necessary information to respond to an FOI request. It is against the law to delete or withhold information in response to a request. If there is cause to believe an individual has done this, their network account may be accessed and identification of any deliberate attempt to withhold information may result in disciplinary action, dismissal and possible legal proceedings.

3.2 Managers

Managers at all levels must ensure individuals they are responsible for are aware of and adhere to this policy.

3.3 Service directors

Service Directors are the Information Asset Owners for the information within their service and must ensure the integrity, security and availability of information within that service. They also approve the content of Freedom of Information responses before disclosure.

3.4 Freedom of Information leads

Identified Freedom of Information leads in each Directorate provide the Information Governance team with requested information within the stated deadlines. They provide the FOI Co-ordinator with clear written guidance to allow a helpful response or request for clarification to be sent when the request itself is unclear or contradictory.

3.5 Information Governance team

The Information Governance team coordinates the requests process and pro-actively manages the Publication Scheme and disclosure log.

3.6 Information Rights Manager

The Information Rights Manager is the technical expert responsible for the application of expert knowledge and the co-ordination of the systems and processes necessary to comply with the Act.

3.6 Data Protection Officer

The Data Protection Officer oversees FOI provision and ensures the strategic needs of the organisation are balanced against individual requests, the requirements of the Act and associated Codes of Practice.

4.0 Freedom of Information Act 2000

4.1 General right of access

Section 1 gives a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions. Under Section 8 of the Act the request must be in writing, there must be a valid name and address for correspondence and a description of the information requested. Requests received electronically will be treated as written requests provided they meet these conditions. Note that the Environmental Information Regulations do not require requests to be made in writing. This is one important difference between the two statutes.

The provisions of the Act are fully retrospective meaning that if the Trust holds the information it must be provided subject to certain conditions and exemptions.

4.2 Publication Scheme

There is a duty under Section 19 of the Act to adopt a Publication Scheme. Applications for information listed in the Publication Scheme can be received verbally or in writing.

The Trust's Publication Scheme identifies information the Trust has either published or intends to publish in the future. It sets out the format in which the information is available and whether a charge will be made for the provision of that information. Contents of the Publication Scheme will be regularly reviewed and updated.

The Publication Scheme is available on the Trust's [website](#), in hard copy or in other formats on request.

4.3 Disclosure log

In addition to proactively updating its Publication Scheme, the Trust will maintain a disclosure log that identifies the main types of requests received and the responses given.

4.4 Duty to provide advice and assistance

Under Section 16 of the Act the Trust has a duty to provide reasonable advice and assistance to applicants. Under the Lord Chancellor's Code of Practice this includes assistance in clarifying unclear requests. The Trust will make all reasonable efforts to seek clarification from the applicant should further information be required

The Trust will make early contact with the applicant and maintain a dialogue throughout the process of dealing with the request, keeping them informed at every stage. It will be sensitive to the applicant's circumstances when considering appropriate methods of contact. It will properly record and document all communications regarding both requests handling and clarification.

If it is unable to provide an applicant with the requested information in the requester's specified format, it will discuss whether an alternative format is acceptable. It will offer advice and assistance to an applicant whose request has been refused on the basis of an exemption.

The Trust will undertake regular feedback satisfaction surveys to ensure its FOI functions meet requesters' expectations.

4.5 Duty to confirm or deny

Anyone making a request is entitled to be informed in writing whether the Trust holds the requested information. This is the duty to confirm or deny.

Under Section 1(3) of the Act the Trust does not have a duty to confirm or deny where it reasonably requires further information to identify and locate the requested information and has advised the applicant accordingly.

When a Fees Notice is issued the Trust has a duty to confirm or deny whether the information is held unless the cost of this alone would exceed the appropriate limit. See [Charges and fees](#)

Under Section 2 of the Act the Trust does not have to comply with the duty to confirm or deny if the information if an absolute exemption applies. See [Appendix 1](#).

Where a qualified exemption applies the public interest test will always be considered to demonstrate in all circumstances that the public interest in refusing to confirm or deny outweighs the public interest in favour of disclosure. The Trust will aim to use the qualified exemptions sparingly and will in accordance with Section 17 of the Act, justify their use.

4.6 Time limits for compliance with requests

The Trust will ensure it complies with the duty to confirm or deny and to provide the information requested within twenty working days in accordance with Section 10 of the Act.

If the information requested by the applicant incurs a charge or a fee which has been paid, the working days between the date of the Fees Notice to when they paid will be disregarded in calculating the twentieth working day following receipt.

4.7 Charges and fees

The Trust will generally not charge for information in its Publication Scheme. It may levy charges for hard copies, multiple copies or copying onto media such as a CD-ROM.

Where the Trust chooses to charge for information published through its Publication Scheme or levy a fee arising from an information request under the general rights of access, it will issue a Fees Notice to the applicant as required by Section 9 of the Act. Applicants are required to pay any fees within a period of three months beginning with the day on which the Fees Notice is given to them.

Regulation 6 of the Fees Regulations also sets out circumstances where limited costs can be applied in the administration of a request. These are 'communication costs' where the Trust can charge costs reasonably incurred for putting the information into the applicant's preferred format, postage and so on.

Currently the requests process is exempt from charges until the cost threshold of £450 is reached, based on a cost of £25 per hour, regardless of the actual rate of pay of the individual(s) involved in the provision of information. The Trust will make reasonable efforts to estimate the cost of complying with the request. Under Section 12 of the Act, the Trust does not have a duty to comply with a request for information if it estimates the cost of compliance would exceed this and therefore reserves the right to refuse to comply or to charge for the communication of information that exceeds this limit.

4.8 Methods of providing information

In accordance with Section 11 of the Act, where reasonably practicable to do so, the Trust is required to:

- Provide a **copy** of the information in permanent form or another acceptable format
- Allow the applicant to **inspect** a record containing the information, or
- Provide a **digest or summary** of the information in permanent form or another acceptable format

If the Trust decides it is not reasonably practicable to comply with any preference expressed by the applicant it will inform the applicant of its reasons and discuss if it is possible to provide the information by another means.

4.9 Refusal of requests

The Trust does not have a duty to comply with a request where:

- The cost of compliance exceeds the appropriate fees limit (currently £450). See [Charges and fees](#)
- The request is vexatious or repeated. See [Vexatious or repeated requests](#)
- An exemption can be applied. See [Exemptions](#)

The Trust will log all requests for information for monitoring purposes and to enable identification of repeated or vexatious requests. If it chooses to apply an exemption to any information, refuses a request that appears to be vexatious or repeated, or the request exceeds the appropriate limit for costs of compliance, it will issue a Refusal Notice to the applicant within twenty working days. It will advise the applicant of the Trust's review and

complaints procedures and set out the applicant's rights to appeal against the decision as conferred by Section 50 of the Act.

4.10 Exemptions

There are 23 exemptions in the Act divided into absolute and qualified exemptions:

- If an absolute exemption applies then there is no obligation under the Act to consider the request for information any further (although there may be scope or obligations for other reasons outside the Act to do so). Absolute exemptions apply to whole classes of information
- Qualified exemptions are subject under Section 2(1)(b) and 2(2)(b) of the Act to an assessment of the balance of the public interest both for and against disclosure (called qualified exemptions because they do not justify withholding information unless on a proper assessment the balance of the public interest is against disclosure). Some of these are also subject to a test of prejudice i.e. disclosure would prejudice the prevention or detection of crime

When refusing a request for information the Trust cannot withhold an entire document because some of the information contained within it is exempt. It will therefore provide a redacted version of the document along with a refusal notice stating why some of the information cannot be released.

When refusing information it will explain which exemption(s) have been applied, why they have been applied and where appropriate, explain the factors for and against disclosure.

The Trust will not withhold information on the grounds it is out of date, incorrect or may cause embarrassment.

See [Appendix 1](#) for the full list of exemptions.

4.11 Vexatious or repeated requests

Under Section 14 of the Act, the Trust does not have to comply with vexatious or repeated requests. However it will not use Section 14 to avoid awkward unresolved questions.

In deciding if a request is vexatious the Trust will take into account the context and history of the request, whether it is likely to cause unjustified distress, disruption or annoyance, is seen as obsessive, if compliance would impose a significant burden in terms of expense and distraction and whether it lacks serious purpose or value.

The request, not the requester, is vexatious. However, the Trust may take into account the past behaviour of the requester if the request continues that behaviour. Where it has previously complied with a request it is not obliged to comply with a subsequent identical or substantially similar request from that requester unless a reasonable interval has elapsed between compliance with the previous request and receipt of the current one

If the cost of compliance is the main issue the Trust will issue an exemption under Section 12 of the Act.

The Trust will not refuse similar requests if they are submitted by different requesters except where it considers them vexatious, such as part of a campaign to cause disruption or distress, or under Section 12 if the requesters are acting together and the aggregated cost of compliance would exceed the cost limit.

In most circumstances, the Trust will issue a Refusal Notice. Under Section 17(6) it may not issue a Refusal Notice if the same person has previously been given one for a previous vexatious or repeated request.

4.12 Identity of the applicant and reasons for the request

Whilst the Act does not specifically say the identity of the applicant should be ignored, the view of the Information Commissioner, and the ethos of the Act is that requests are both applicant and motive blind. This is on the understanding the Act enables disclosure in the public interest generally rather than disclosure to satisfy individual interests.

The Trust will therefore consider all requests on the basis that identity is not a material consideration when deciding whether or not to release the information.

Exceptions are where:

- The Trust considers the request repeated or vexatious
- The applicant requests their own personal data which is exempt under Section 40(1)
- There may be aggregated costs under the Fees Regulations
- Release would be likely to endanger the health and safety of the requester under Section 38 of the Act
- Knowledge of the applicant's identity leads the Trust to believe the information is reasonably accessible to that person by other means (Section 21), for example, a member of staff requesting information already clearly accessible to them
- Under the prejudice based exemptions, prejudice would be caused by releasing the information either to the requester or to any member of the public
- Release of third party personal data under Section 40(2) would be contrary to data protection principles to release the information to the general public

4.13 Round Robin requests

Whatever the form in which they arrive and whatever the purpose behind the request, written requests for information trigger a requirement to properly consider the legal obligations of the Act.

If a circular questionnaire or any other round robin request for information identifies the requester and includes an address for an answer, the Trust will:

- Liaise with the London-wide NHS lead for a cohesive approach
- Identify which questions amount to requests for information held on record
- Be ready to offer advice and assistance that is reasonable in the circumstances
- Offer a response in line with the requirements of the Act

Where questions invite comment or opinion not held on record the Trust will, dependent on the question, either advise the applicant the information is not held, or occasionally, provide the comment or opinion as part of its normal business activities.

4.14 Transferring requests for information

When the Trust receives a request and believes some or all of the information is held by another authority it will take appropriate action to assist the applicant, either by:

- Contacting the applicant to advise the information may be held by another public authority. The applicant will be provided with contact details and advised to apply directly to the relevant authority
- Consulting with the other authority to establish if the information is held and if so, directly transferring the request. Prior to transfer the Trust will consider whether a transfer is appropriate and whether the applicant is likely to have any grounds to object to the transfer. If there is any doubt, the applicant will be advised to directly contact the other authority

4.15 Third parties

The Act covers information 'held' by a public authority, no matter how it was obtained even if the copyright or ownership rests with another body or is also held by another authority.

The only exception is where the information is held solely on behalf of another person although Section 23 also provides an absolute exemption for information received from certain security bodies. There are some small differences in EIR.

In accordance with the Section 45 Code of Practice the Trust will inform agencies and individuals supplying information to the Trust that the information is subject to the Freedom of Information Act 2000 and as such is disclosable.

Failure to consult with other relevant bodies contravenes the Code of Practice.

When a third party is consulted the time limit is not extended. When a request is received the Trust will contact the other party as a matter of courtesy and to:

- Establish if there is any statutory reason why the information should not be disclosed
- Identify relevant exemptions or public interest factors
- Discuss the release of more context or explanatory material
- Identify copyright restrictions

4.16 Contracts

The Trust is obliged to disclose information contained in contracts, regardless of the terms of the contract, unless an exemption can be applied.

Where the Trust is under pressure to accept confidentiality clauses relating to the terms of the contract, its value and performance, it will wherever possible, reject such clauses in accordance with the Lord Chancellor's Code of Practice.

On an exception basis the Trust may agree to a schedule of the contract clearly identifying what information should not be disclosed. Any acceptance of confidentiality provisions must be capable of being justified to the Information Commissioner. The Trust will also advise the other party that any restrictions on disclosure could ultimately be overridden by obligations under the Act.

It will not agree to hold information 'in confidence' when the information is not in fact confidential by nature.

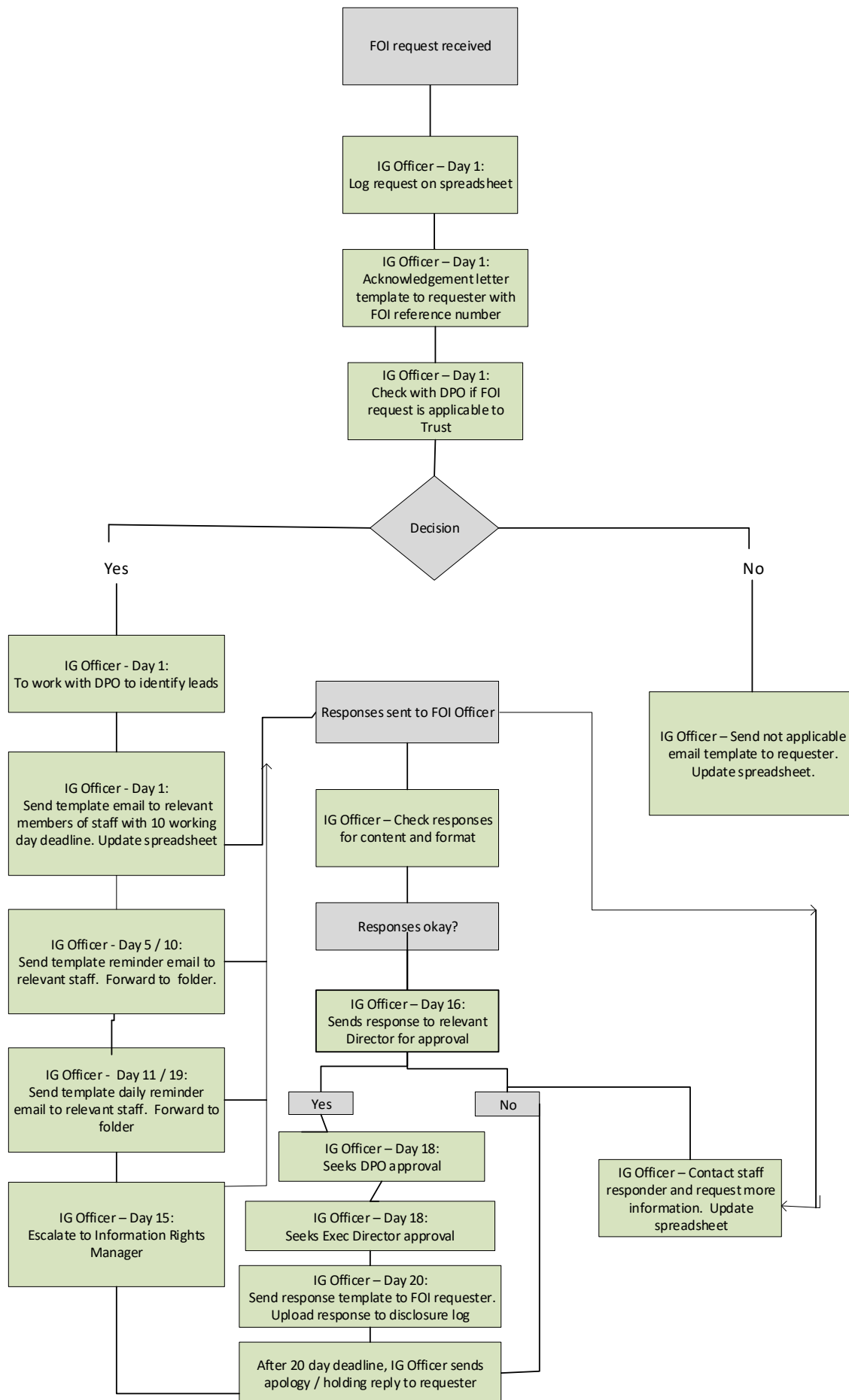
4.17 Internal review process

Under the Act the Trust is not legally required to have an internal review process but in order to conform to the Section 45 Code of Practice there should be one in place. It will therefore convene an internal review panel on an ad hoc basis whenever a review is required.

The Trust's review process will comprise a reconsideration of both the handling of the request and the decision. The review will be impartial and thorough and normally be completed within 20 working days. In exceptional cases it may take up to 40 working days to complete.

4.18 Records management

The Trust will ensure compliance with the Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Act. The Trust's Records policy lays out the standards for compliance.



Appendix 1.0 List of exemptions

Absolute exemptions under the Act are:

- 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 40 - Personal Information (where disclosure may contravene the Data Protection Act 1998)
- Section 41 - Information provided in confidence
- Section 44 - Prohibitions on disclosure

The exemptions that are qualified by the public interest test are:

- Section 22 - Information intended for future publication
- Section 24 - National security
- Section 26 - Defence
- Section 27 - International relations
- Section 28 - Relations within the United Kingdom
- Section 29 - The economy
- Section 30 - Investigations and proceedings conducted by public authorities
- Section 31 - Law enforcement
- Section 33 - Audit functions
- Section 35 - Formulation of Government policy
- Section 36 - Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords where this is an absolute exemption)
- Section 37 - Communications with Her Majesty, with other members of the Royal Household, and the conferring by the Crown of any honour or dignity
- Section 38 - Health and safety
- Section 39 - Environmental information
- Section 42 - Legal professional privilege
- Section 43 - Commercial interests