

Freedom of Information Policy and Procedure

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Commencement of Consultation Date

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The following Committees, groups or individuals have been consulted in the development of this version of this policy:

Name:	Date:
Divisional and Corporate Freedom of Information (FoI) leads (relevant Information Asset Owners) including Information Governance Department and Data Protection Officer	January 2020

Previous Version History

Version No.	Lead	Date Change Implemented	Reason for Change
Version 2	Michelle Rogan, Director of Corporate Governance	16 March 2016	
Version 3.0	Ben Pumphrey	Jan 2020	3 yearly review and re-write

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1. Introduction

The Freedom of Information Act 2000 (“the FOI Act”) was passed in November 2000, and came into force on 1 January 2005. It sets out the basic rights of an individual to request and receive any recorded information that is held by a public body and, therefore, applies to Birmingham Community Healthcare NHS Foundation Trust (“the Trust”). The main principle behind the FOI Act is that people have a right to know about the FOI Activities of public authorities unless there is a good reason for them not to, and to ensure that public services are efficiently and properly delivered.

The FOI Act sets out the way requests should be made and handled, outlines the circumstances under which information is exempt from disclosure and highlights the statutory obligations of the Trust. The FOI Act is enforced by the Information Commissioner who also enforces data protection legislation.

Information under Section 84 of the FOI Act means recorded information may be held in any form, electronic or paper. Information held by the Trust refers to information retained for the purpose of the Trust’s business. Purely personal, political, constituency, or trade union information, for example, will not be held for the purposes of the FOI Act and so will not be relevant for the purposes of a request under the FOI Act. Where the information requested is not that envisaged by the FOI Act, the Trust will treat such a request under any other appropriate channel and inform the applicant as such. Examples include requests for an explanation, clarification of policy, comments on the Trust’s business or any other correspondence that does not match the definition of information under the FOI Act.

Similarly, requests for environmental information should only be dealt with under the Environmental Information Regulations 2004, and a request for a person’s own personal data should be dealt with under the subject access provisions of the Data Protection Act 2018.

2. Purpose

The purpose of this policy is to support staff by setting out the approach to comply with the FOI Act and EIR. The policy describes the duties of the Trust and provide information to the public on how the Trust processes requests.

This policy aims to lay down the principles that must be observed by all who work within the Trust and to provide them with sufficient guidance to deal with requests.

This policy sets out the obligations of the Trust under the FOI Act as well as the processes and procedures to be followed in fulfilling those obligations.

3. Scope

This policy will apply to all employees of the Trust and those carrying out a function on its behalf (including bank and agency staff as well as consultants, clinical and non-clinical). All must follow the procedure outlined herein for responding to requests made under the FOI Act.

4. Objectives

These should be set out against the applicable Trust Strategic objectives which are:

Making good use of resources

5. Duties and Responsibilities

- 5.1 Chief Executive Officer, under the Scheme of Delegation and Reservation of Powers, responsible for ensuring compliance with the Act and for ensuring that a Freedom of Information Scheme is published and maintained. The Chief Executive Officer is also the qualified person for the purpose of section 36 of the Act.
- 5.2 **Director of Corporate Governance** is responsible for developing this policy and procedure and for processing all requests for information made pursuant to the Act.
- 5.3 **All staff** are responsible for ensuring the statutory time limit for responding to requests is met. Staff are responsible for ensuring that all responses to requests for information are promptly forwarded to the Freedom of Information Team for processing within the required timescale (see section 6.2.3 below).
- 5.4 **Managers** each Trust division and corporate area is responsible for collating the information needed to respond to a Freedom of Information request and for forwarding this to the Freedom of Information team in the required timescale.
- 5.6 **Head of IG** holds overall responsibility for the daily management of requests. This includes which regulation requests are processed under and approving exemptions to be applied.
- 5.7 **FOI Officer** holds day to day responsibility for processing requests submitted under the FOI Act or EIR. Overall duties include distributing requests to the relevant Manager for information to be collated and responses are sent to the applicant within the timescales.

6. Definitions

- 6.1 **Environmental Information Regulations 2004** (EIR) provides public access to information held by public authorities that relate to the environment.

6.2 Freedom of Information Act 2000 (FOI Act) provides public access to information held by public authorities.

6.3 Information Commissioner's Office (ICO) is responsible for the enforcement of the FOI Act and all other data protection legislation in the UK.

6.4 Request refers to a request for information submitted by an individual (person or organisation (body)) under either FOI Act or EIR.

7. **Applicant** refers to a person or organisation (body) that has submitted a request under the FOI Act or EIR.

6.6 Re-use of Public Sector Information supports that information cannot be used in any other way than what it was intended for. For example another organisation republishing the information or using it provide a new product or resource, on its own or combining it with other information, on a commercial basis.

6.7 Public Interest Test is a review on a case by case basis to determine the balance of disclosing or withholding information when a qualified exemption is used.

8. Managing Requests

7.1 The Trust adopts the Freedom of Information Code of Practice under section 45 of the FOI Act that is published by the Cabinet Office and is appended to this policy at Appendix 1.

7.2 All submitted requests will receive an acknowledgement from the Trust within 2 working days. A response shall be provided to the applicant within 20 working days.

7.3 The Trust will provide a written response that will consist of the information requested. Where the requested information is to be withheld a written refusal notice will be issued explaining this decision against the relevant absolute or qualified exemption(s) that has been applied and the conclusion of the public interest test where this has been conducted.

7.3 The Trust will not charge for the provision of any information where the costs liable to be incurred in complying with the request do not exceed the current statutory limit (currently £450 or 18 hours' worth of time incurred in providing the information at £25/hour). In the event of a request for a hardcopy of any information that is electronic and freely available, then the Trust may charge for the cost of photocopying, printing and postage or any scanning costs that may be incurred.

7.4 Under the Re-use of Public Sector Information regulations an applicant may use information disclosed by the Trust for a purpose other than for which the information was originally produced by the Trust. The applicant must apply for permission to reuse the information. The Trust may impose restrictions on how the information could be re-used, but such conditions must be as least restrictive as possible. The Trust should also limit any charge to the costs of reproducing and disseminating that information.

9. Implementation

Following ratification the procedural document's author/lead will ensure (in discussion with the Committee's Secretary) that the document is forwarded to the Quality and Standards Assurance Team (Q&SAT). The Q&SAT will make final checks, amend the footer and forward to the Library for uploading to the intranet. Once uploaded to the intranet the Library will inform the Communication Team to ensure notification appears in the next Staff E-Newsletter

10. Duty of Candour

The Trust recognises it has a duty of candour under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20. Under this duty it has a responsibility to be open and transparent with patients, families and carers in relation to their care and treatment and has specific requirements when things go wrong. This will include informing people about any clinical incident, providing reasonable support, providing truthful information and an apology when things go wrong. If an incident occurs which involve a breach of the requirements of this policy, staff and managers should consider following the guidance set out in the Being Open incorporating Duty of Candour Policy available on the trust intranet site.

11. Implications

10.1 Training Implications:

There are no known training implications.

10.2 Financial Implications:

There may be financial implications where the ICO applies a fine to a breach of any personal identifiable data.

10.3 Legal Implications:

There are no known legal implications.

12. Monitoring and Audit

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements	Acting on recommendations and Lead(s)	Change in practice and lessons to be shared
Overall performance of FOIA	Head of IG	<ul style="list-style-type: none"> • Number of requests received • Number of requests breaching 20 working days • Number of requests for internal review • Number of complaints made to the ICO • DSPT compliance 	Bi-monthly	Information Governance Steering Group	Information Governance Steering Group	Information Governance Steering Group

13. References/Evidence/Glossary

- [Data Protection Act 2018 at
http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted](http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted)
- [Freedom of Information Act 2000 at
http://www.legislation.gov.uk/ukpga/2000/36/contents](http://www.legislation.gov.uk/ukpga/2000/36/contents)
- [Freedom of Information Code of Practice at
https://www.gov.uk/government/publications/freedom-of-information-code-of-practice](https://www.gov.uk/government/publications/freedom-of-information-code-of-practice)
- [Information Commissioner's Office at https://ico.org.uk/](https://ico.org.uk/)
- [The Environmental Information Regulations 2004 at
http://www.legislation.gov.uk/uksi/2004/3391/contents/made](http://www.legislation.gov.uk/uksi/2004/3391/contents/made)
- Data Security and Protection Toolkit - NHS Digital

Appendix 1 Cabinet Office Freedom of Information Code of Practice

See separate document

<https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>