

Freedom of Information Act Policy

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Document Control / History

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5	Refresh to disassociate SOP activities
6	Update to reflect Publication Scheme requirements

Consultation

Information Governance Group members

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Freedom of Information Act (FOIA) Policy

To be read in conjunction with any policies listed in Trust Associated Documents.

1 Introduction

- 1.1 The Freedom of Information Act [the Act] gives members of the public access to information held by public authorities. It does this in two ways:
- Public authorities are obliged to publish certain information about their activities in a defined *Publication Scheme*
<https://www.medway.nhs.uk/patients-and-public/access-to-information/publication-scheme.htm> and
 - Members of the public are entitled to request information from public authorities via written requests.
- 1.2 The Act covers any recorded information¹ that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland's own Freedom of Information (Scotland) Act 2002.
- 1.3 Medway NHS Foundation Trust is a public authority under the definition of the Act.

2 Purpose / Aim and Objective

- 2.1 The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a valid reason or exemption to not release the information. This is sometimes described as a presumption or assumption in favour of disclosure.
- 2.2 This means that:
- everybody has a right to access official information. Disclosure of information should be the default – for example, information should be kept private only when there is a valid reason and it is permitted by the Act;
 - an applicant (requester) does not need to give a reason for wanting the information. On the contrary, the Trust must justify refusing them information;
 - The Trust must treat all requests for information equally, except under some circumstances relating to [vexatious requests](#) and [personal data](#). The information someone can get under the Act should not be affected by who they are. The Trust should treat all requesters equally, whether they are journalists, local residents, public authority employees, or foreign researchers; and
 - As we should treat all requesters equally, we should only disclose information under the Act if we would disclose it to anyone else who asked. In other words, we should consider any information released under the Act as if it were being released to the world at large.

¹ Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings

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- 2.3 This policy establishes how compliance with the FOIA will be monitored and that key compliance areas provide the Senior Information Risk Officer (SIRO) with timely, reliable and fit for purpose information to meet reporting requirements, to support legislative and regulatory compliance and to assist management in decision making.
- 2.4 Assurances will be provided to the Caldicott Guardian and Trust Board through reports from the Trust SIRO - these reports will promote openness and transparency in how the Trust is progressing against statutory deadlines, and highlight key areas of risk and non-compliance.
- 2.5 The Trust aims to 'Be the BEST' in everything it sets out to, and this extends to embedding Information Governance at the heart of how it protects, manages and uses patient, staff and corporate information.

3 Definitions

- 3.1 **Absolute exemption** - applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of nondisclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part 2 of the Act.
- 3.2 **Applicant** - the individual(s), group or organisation requesting access to information under the Act.
- 3.3 **Duty to confirm or deny** - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority the information specified in the request or not.
- 3.4 **Fees Notice** - a written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses. For full details of the Trust 'Fees and Charges' scheme please see Appendix 2.
- 3.5 **Fees Regulations** - national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.
- 3.6 **General right of access** - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is

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not obliged to comply with it. The provisions of Part 11 relate to the nature of the information requested.

- 3.7 **Information Commissioner** - The Information Commissioner (known as the ICO) is the United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the ICO has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

The ICO enforces and oversees the Data Protection Act and the Freedom of Information Act.

- 3.8 **Public authority** - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

- On the face of the Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
- By order under section 4(1) adding to Schedule 1 anybody or the holder of any office that satisfies certain specified conditions;
- By order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or
- By reference to the definition of a publicly-owned company in section 6 of the Act.

- 3.9 **Publication Scheme** - a scheme specifying the classes of information which a public body publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment. The ICO has published a [Definitions Guide for the NHS](#) confirming the minimum expectations that acute trusts should publish proactively.

- 3.10 **Qualified exemption** - Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part 11 of the Act.

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4 (Duties) Roles & Responsibilities

Staff and Non-Executive Directors

4.1 This policy applies to all staff and Non-Executive Directors.

Senior Information Risk Officer (SIRO)

4.2 The SIRO has delegated responsibility for ensuring compliance with the Act. The SIRO, as Director with responsibility for subject matter expertise for FOIA, has overarching executive authority to approve disclosure of requests for information under the Act. The SIRO also fulfils requests for Internal Review when a requester is dissatisfied with a response from the Trust.

Information Governance (IG) Manager

4.3 The IG Manager oversees the receipt, acknowledgement and processing of requests made under the Act and ensures that the Publication Scheme is actively maintained.

Trust Managers

4.4 All Trust managers are responsible for ensuring that:

- staff for whom they are responsible are aware of and adhere to this Policy. They are also responsible for ensuring staff are updated in regard to any changes in this Policy;
- all FOIA requests received are forwarded in a timely manner to the IG team at Medwayft.foi@nhs.net;
- responses to requests for information from the IG team are processed in a timely manner, or confirming that the information is not held.

Publication Scheme Owners and Publishers

4.5 All Publication Scheme page owners are responsible for ensuring that :

- Their web-pages are maintained in accordance with the requirements of ICO requirements (both general and those specific to the NHS)
- All Trust Publishers must ensure that web-pages have content uploaded in a timely manner and in accordance with the requirements of ICO requirements (both general and those specific to the NHS)

Corporate Oversight

4.6 The SIRO, who has delegated responsibility for the Freedom of Information Act from the Chief Executive, will oversee the implementation of this Policy. The Information Governance Manager will establish systems and procedures that will support the implementation of this Policy.

5 Monitoring and Review

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What will be monitored	How/Method/ Frequency	Lead	Reporting to	Deficiencies/ gaps Recommendations and actions
Policy Review	Reviewed every two years or sooner if there are changes in legislation	Information Governance Manager	Information Governance Group	Where gaps are recognised the policy will be reviewed and updated
Compliance with FOI response times	Excel log sheet – kept by IG FOIA officer. Checked daily. Performance against statutory deadlines. External publication of performance on Trust website.	Information Governance Manager	Weekly report to Chief Executive and SIRO. Half yearly SIRO report to the Trust Board	Any gaps in response times will be actioned immediately
Publication Scheme	monthly by the IG FOIA officer, Documentation Manager and Information Governance Manager – Scheme is externally available on Trust website	Information Governance Manager	Information Governance Group on a six monthly basis	Owners and Publishers will be advised of issues via the monthly audit output report

6 Training and Implementation

- 6.1 All staff are trained in the key messages of FOIA as part of induction (Corporate Welcome) training, and again annually as an element of the Information Governance Refresher training. This can be either face to face or on-line.
- 6.2 Compliance with this policy is monitored via:
- 6.2.1 The percentage level of staff completing training
 - 6.2.2 Weekly and monthly management information on the FOIA requests issued within the statutory deadline
 - 6.2.3 Quarterly publication of Trust performance on the Trust website commencing June 2017 with performance for 2016-7
 - 6.2.4 Publication of questions received and responses issued on the Trust Disclosure log
 - 6.2.5 Updated and maintained publication scheme in compliance with the ICO Definitions document for NHS acute trusts.

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7 Equality Impact Assessment

		Yes/No	Comments
1	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	▪ Race	N	
	▪ Disability	N	
	▪ Gender	N	
	▪ Religion or belief	N	
	▪ Sexual orientation including lesbian, gay and bisexual people	N	
	▪ Age	N	
2	Is there any evidence that some groups are affected differently?	N	
3	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	
4	Is the impact of the policy/guidance likely to be negative?	N/A	
5	If so can the impact be avoided?	N/A	
6	What alternatives are there to achieving the policy/guidance without the impact?	N/A	
7	Can we reduce the impact by taking different action?	N/A	

8 References

Document	Ref No
References:	
Data Protection Act 1998	
Freedom of Information Act 2000	
Records Management: NHS Code of Practice (Parts 1 and 2) 2006	
Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions	

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under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002.

Lord Chancellor's Code of Practice on the Management of Records Under section 46 of the Freedom of Information Act 2000, November 2002

Trust Associated Documents:

Freedom of Information Act SOP	SOP0236
Information Governance Policy	POLCGR017
Information Governance Strategy	STRCGR013
Data Protection Act Policy	POLCGR007

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Appendix 1 FOIA Exemptions table

Exemption	Absolute	Qualified - Public Interest Test needed	Class ²	Prejudice - Prejudice Test needed
Section 21: Information reasonably accessible to the applicant by other means	Yes		Yes	
Section 22: Information intended for future publication		Yes	Yes	
Section 23: Security bodies	Yes		Yes	
Section 24: Safeguarding national security		Yes		Yes
Section 26: Defence		Yes		Yes
Section 27: International relations		Yes		Yes
Section 28: Relations within the UK		Yes		Yes
Section 29: The economy		Yes		Yes
Section 30: Investigations and proceedings		Yes	Yes	
Section 31: Law enforcement		Yes		Yes
Section 32: Information contained in court transcripts/transcripts	Yes		Yes	
Section 33: Public audit		Yes		Yes
Section 34: Parliamentary privilege	Yes		Yes	
Section 35: Government policy		Yes	Yes	
Section 36: Effective conduct of public affairs		Yes		Yes
Section 37: Communications with Her Majesty and the awarding of honours		Yes	Yes	
Section 38: Health and safety		Yes		Yes
Section 39: Environmental Information		Yes	Yes	
Section 40 (1): Personal information about the requester	Yes		Yes	
Section 40 (2): Personal information about a third party		Yes	Yes	
Section 41: Information provided in confidence	Yes			
Section 42: Legal professional privilege		Yes	Yes	
Section 43: Commercial interest		Yes		Yes
Section 44: Prohibitions on disclosure	Yes		Yes	

² Class based exemptions only apply to a particular category or class of information. Where information falls within these exemptions, the exemption will always apply

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Appendix 2 Fees and charges

Scope

This policy applies to the levying of fees and charges in relation to information access requests received by the Trust falling under:

- The Freedom of Information Act 2000 (FOIA)
- The Environmental Information Regulations 2004 (EIRs)

Legal background for charges

Under Section 12 of the Freedom of Information Act a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” prescribed in the regulations. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, identify the “appropriate limit” of fees and charges the Trust is permitted to levy in response to requests made under Freedom of Information. This also applies to requests for “unstructured” personal information under Section 9A of the Data Protection Act 1998 (inserted by section 69 of FOIA).

There is no “appropriate limit” to the cost of complying with requests for environmental information. However, Regulation 8 of the Environmental Information Regulations 2004, provides for the recovery of “reasonable” costs.

The ‘appropriate limit’

Under Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, the “appropriate limit” is set at £450 for non-governmental public bodies.

This is calculated on a standard rate of £25 per hour based on estimating the staff time taken to:

- Determine if the information is held
- Locate the information or a document which may contain the information
- Retrieve the information, or a document, which may contain the information
- Edit or extract the releasable information contained within a document

This calculation does not take into account the time spent/costs of:

- Checking that a request for information meets the requirements of FOIA
- Considering the application of exemptions; prejudice and/or public interest tests
- Obtaining internal or external legal advice
- Consulting with third parties and obtaining authorisation to send out information

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Based on the standard hourly rate of £25 specified in the FOIA Fees Regulations, the maximum amount of staff time spent finding, retrieving, collating and editing before exceeding the £450 cost limit is 18 hours.

Charges made under EIR may not exceed the “actual costs of producing the information” unless the public authority is entitled to levy a market based charge for the information. No charges can be made for allowing an applicant:

- Access to a public register or list of environmental information
- To examine the information requested at the place which the public authority makes available for that purpose

Under both FOIA and EIR, the actual costs of communicating information released to the applicant are recoverable. This includes the cost of printing, photocopying, postage and/or supplying the information in a particular form.

Estimating the cost of an information request

FOIA information requests

The Trust makes information available through its publication scheme. Most information in the scheme is available free of charge. Where charges apply, they will be indicated in the scheme.

The Freedom of Information Act is intended to build on existing access channels rather than replace existing access regimes. Therefore if information is reasonably accessible to applicants through other means, such as through other legislation or the Trust’s publication scheme, it is exempt from FOIA. Where information is otherwise available, this means the rules for costing and charging for compliance with the act do not apply.

For information that is not otherwise accessible, if it is estimated that a request will take less than 18 hours to complete and there is no reason to withhold the information, the request will be dealt with free of charge except for disbursement costs.

If it is estimated that such a request will take more than 18 hours to complete.

The Trust is not obliged to comply with the request and will normally turn down requests exceeding this limit. Applicants will be assisted to make the request smaller and more precisely focused.

Time limits and charging

If disbursement costs apply for responding to an FOI request under the ‘appropriate limit’ an estimated Fees Notice will be issued. Once the Fees Notice has been issued, the clock stops and the applicant has three months to pay the charge. The request lapses after 3

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months if the charge remains unpaid. Only when payment has been received and has cleared does the clock restart and work begin on collating the information.

The Fees Notice will usually be issued, if possible, before any costs are incurred in preparing to answer the request. If a charge applies, the estimated fees and/or costs of supplying the information, will be payable in advance.

EIR information requests

Environmental information will be available for examination on Trust premises free of charge. If the applicant requests copies of the information, photocopying and disbursement costs will apply.

Aggregating requests

The FOIA Fees Regulations provide for the costs of answering more than one request to be added together or aggregated for the purposes of estimating whether the 'appropriate limit' would be exceeded in relation to any one of the requests. Requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to the same public authority;
- they must be either from the same person, or from different persons who appear to the authority to be acting together or in pursuance of a campaign (section 12(4)(b) of FOIA);
- the requests must relate to the same or similar information; and
- they must have been received within a space of 60 consecutive working days. This provision is designed to prevent individuals or organisations undermining the 'appropriate limit' by splitting a request into smaller parts. Before applying these provisions, the Trust will carefully consider the reasons for believing that requests have been framed to frustrate the cost limit.

Repetitious/vexatious requests

In considering whether to refuse to answer multiple questions altogether on the grounds that they are repetitious or vexatious requests, the Trust will take account of the appropriate procedural guidance.

Communicating information – disbursement costs

Irrespective of whether the request is below or above the 'appropriate limit', disbursements will normally be charged where the estimated photocopying cost exceeds the cost of five A4 black & white photocopies, or one A4 colour photocopy.

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Under Section 11(1) of the FOIA, authorities have a duty to take account of the applicants' preferred format for receiving information. This may include:

- summarising the information and providing the applicant with a copy (i.e. photocopying or printing)
- allowing the applicant to inspect a record containing the information
- producing material in an applicant's preferred format (for example by putting it onto a CD-ROM, video or audio cassette) or
- translating information into a language other than English, or preparing information in another format (e.g. Braille, large type) at the request of the applicant

Charges will not be applied by the Trust for costs incurred arising from meeting our obligations under disability or other equality legislation.

Postage and printing costs

Applicants may be expected to meet the postage costs. The cost of an A4 photocopy or printed sheet will be charged at 10p for black & white and 50p colour per A4 sheet and postal costs will be based on current Royal Mail charges.

Other costs

The Trust is committed to the use of electronic means to provide information that has been requested, and will encourage and advocate the use of these means in all appropriate cases, subject always to the stated preference of the applicant. Normally information supplied electronically will not involve a cost unless hard copy information has been specifically converted for this purpose.

Other or additional costs (to postage and printing charges) incurred as a result of communicating information in a way requested by the applicant where the overall amount exceeds £1.00, may be payable. This includes but is not limited to requests to supply information on CD ROM; floppy disc; another medium, or in a language other than English.

Review of charging policy

This policy will be reviewed annually in conjunction with the annual review of the Publication Scheme.

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