

Freedom of Information Act (FOI) Policy

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Revision No	Date	Reason for change
5		Refresh to disassociate SOP activities
6		Update to reflect Publication Scheme requirements
7	September 2019	Three year review and refresh

Consultation

Information Governance Group members

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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

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9,12 and 14 relate to the request itself and the circumstances in which an authority is 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.

Executive Directors

4.2 Each Director is responsible for ensuring that final responses for FOI are accurate as subject matter experts for their areas and have authority to approve disclosure of requests for information under the Act.

Information Governance (IG) Manager.

4.3 The IG Manager is responsible for ensure ensuring compliance with the Act for the Trust. The IG Manager also fulfils requests for Internal Review when a requester is dissatisfied with a response from the Trust

Information Governance (IG) Officer FOI Lead

4.4 The IG Officer FOI lead oversees the receipt, acknowledgement and processing of requests made under the Act and ensures that the Publication Scheme is actively maintained. The lead is also the subject matter expert for the Trust.

Trust Managers

4.5 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

4.6 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

4.7 The IG Manager has delegated responsibility for the Freedom of Information Act from the Chief Executive, will oversee the implementation of this Policy. The

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Information Governance Manager will establish systems and procedures that will support the implementation of this Policy.

5 Monitoring and Review

What will be monitored	How/Method/Frequency	Lead	Reporting to	Deficiencies/ gaps Recommendations and actions
Policy Review	Reviewed every three 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 Directors Reports through the IGG	Any gaps in response times will be actioned immediately
Publication Scheme	Monthly by the IG FOIA officer 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 Data Security and Protection 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

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- 6.2.3 Quarterly publication of Trust performance on the Trust website commencing
- 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 Statement & Tool

All public bodies have a statutory duty under The Equality Act 2010 (Statutory Duties) Regulations 2011 to provide “evidence of analysis it undertook to establish whether its policies and practices would further, or had furthered, the aims set out in section 149(1) of the [Equality Act 2010]”.

The policy owner must insert here a statement to summarise how they have assessed the policy for impact on the protected characteristics under the Equality Act 2010. Guidance on how to do this can be found in the Guidance Note on Equality Impact Assessment [[AGN00168 - Equality Impact Assessment guidance note](#)]. Key issues to include are:

- An assessment of how relevant the policy is to equality and diversity
- The key informants (e.g. data and/or consultees) of the assessment
- What, if anything, was learnt, and any actions that need to be taken to ensure that the policy can be delivered equitably.
- Where the impact assessment can be located (e.g. available from the document author)

8 References

Document	Ref No
References:	
General Data Protection Regulations	
Data Protection Act 2018	
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 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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