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Information Governance Steering Group

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Compliance: Mandatory for all permanent & temporary employees, contractors & sub-contractors of North Yorkshire and York PCT

Equality & Diversity Statement: This policy has been subject to an equality & diversity impact assessment

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17.09.09	Information Governance Team	Draft New Policy – for consultation	0.001
03.11.09		New Policy approved	1.0
04.12.09	Information Governance Team	Addition of explicit reference to s.77 to 4.8 All Staff section (p.9). Tel/Fax no's updated.	1.001
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Preface

This Policy is made between North Yorkshire and York Primary Care Trust (i.e. NHS North Yorkshire and York and NHS North Yorkshire and York (Community and Mental Health Services), “the PCT” / “the Trust”) and the recognised staff side organisations, using the mechanism of the Joint Negotiation and Consultative Committee (JNCC) and Local Negotiating Committee (LNC). It will remain in force until superseded by a replacement Policy, or until terminated by either management or staff side, giving no less than six months notice. The purpose of the notice to terminate the Policy is to provide the opportunity to for both parties to renegotiate a replacement Policy. Withdrawal by one party, giving no less than six months notice, will not of itself invalidate the agreement. If agreement cannot be reached on a revised policy, then the matter will be dealt with through the PCT’s Grievance Procedure.

Document Objectives

This policy sets out the approach taken within the PCT to provide a policy for compliance with the various National Legislation, Professional Standards and Codes of Practice relating to Information Governance.

1.0 Introduction

Throughout this document “the PCT” or “the Trust” should be taken to refer to both:

- NHS North Yorkshire and York; and
- NHS North Yorkshire and York – Community and Mental Health Services

1.1 The Freedom of Information Act 2000 (“the Act” / FOIA), is part of the Government’s commitment to greater openness in the public sector, a commitment supported by the PCT. It gives a right of access by anyone to certain recorded information held by public organisations. The Act is fully retrospective and replaces the non-statutory *Code of Practice on Openness in the NHS* (Department of Health, 2003).

The Trust’s statement of intent under the Freedom of Information (FOI) Policy is that we will make all information we hold available, unless individuals are not entitled to have access to it, or it is not in the public interest to disclose it.

1.2 Requests to re-use Trust information received under a FOI application in accordance with the Re-use of Public Sector Information Regulations 2005 are also covered by the policy.

1.3 This policy also covers requests for information made under the Environmental Information Regulations 2004.

1.4 Requests for information about identifiable living or deceased individuals must be dealt with in accordance with the Data Protection Act 1998 or Access to Health Records Act 1990, accordingly.

2.0 Scope

2.1 This policy provides a framework for the Trust to ensure compliance with the Freedom of Information Act 2000, Re-use of Public Sector Information Regulations 2005 and Environmental Information Regulations 2004.

2.2 This policy applies to:

- All employees of the Trust
- Chairman, Non-Executive Directors and members of the Clinical Executive
- Contracted third parties (including agency staff)
- Students and trainees
- Staff on secondment and other staff on placement with the Trust

2.3 It is important that this policy is read carefully and thoroughly understood. Any issues can be discussed with the Information Governance Team, or Directorate FOI Leads.

3.0 Definitions

3.1 'Information' means any recorded information we hold in any form. This includes documents, plans, and all other types of recorded information that are not personal information.

Individuals can ask to see any information we hold but the Act does exclude access to some information. (One of the exemptions is access to personal information).

3.2 'The Act' refers to the Freedom of Information Act 2000.

3.3 'FOI' is an acronym for Freedom of Information.

3.4 'DPA' is an acronym for Data Protection Act.

3.5 'ICO' is an acronym for the Information Commissioner's Office. This is the UK's independent authority set up to promote access to official information and to protect personal information. The ICO covers Data Protection, Freedom of Information, privacy and electronic communications and the Environmental Information Regulations 2004.

3.6 'Exemptions' are provisions within the Act that define particular types of information that public bodies are not obliged to disclose. Exemptions can be either absolute or qualified.

3.7 'Public Interest Test' is the test a public body must apply if it feels the information requested falls under a qualified exemption.

3.8 'Publication Scheme' all public authorities have a legal duty to compile and make available a list of documents that it has in its possession and that will be routinely made available to the public. This list is known as the Publication Scheme and is to be made available via the Trust's website and in printed form on request.

3.9 'Business as usual' refers to routine requests for information; these do not fall under the FOI umbrella.

3.10 'Duty to confirm or deny' under Section 1 of the FOIA public authorities have a duty to inform the person requesting information ('the applicant') whether or not the information they have requested is held by the authority. (In some cases however it may be appropriate (under the Act) to neither confirm nor deny whether the information is held because to do so would itself communicate sensitive and potentially damaging information, to the detriment of the public good).

3.11 'Effective Conduct of Public Affairs' Section 36 of the Act sets out an exemption from the right to know if the disclosure of information, in the reasonable opinion of a qualified person, would prejudice the effective conduct of public affairs through:

- Prejudice or likely prejudice to the maintenance of the convention of collective responsibility of Ministers of the Crown, the work of the Executive

Committee of the Northern Ireland Assembly or the work of the executive committee of the National Assembly for Wales

- Inhibition or likely inhibition of the free and frank provision of advice or exchange of views
- Any other prejudice to the effective conduct of public affairs

For information (other than 'statistical information') to be exempt under Section 36, it must in the 'reasonable opinion of a qualified person' (in our organisation this person is the Chief Executive) be capable of either prejudicing or inhibiting the matters listed above.

- 3.12 'Advice and Assistance' Section 16 of the Act requires that all public authorities provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

The provision of advice and assistance can be seen as the means by which the Trust engages with the applicant in order to establish what it is that the applicant wants and, where possible, assists them in obtaining this, maintaining a dialogue with the applicant throughout the process.

- 3.13 'Records Management' Section 46 of the Act refers to the Code of Practice on Records Management and it is Part 1 of this code that the Trust must comply with, by implementing records management policies. The PCT Records Management Policy is available from the Information Governance pages of the staff website:
www.nyypct.nhs.uk/Corporate/InformationGovernance/PoliciesGuidelines.htm

4.0 Responsibilities

4.1 Chief Executive

The Chief Executive has overall responsibility for ensuring implementation of the Act within the Trust. They will also act as the Trust's appropriate 'qualified person' in relation to the application of Section 36 of the Act (an exemption in relation to the prejudice to the effective conduct of public affairs).

4.2 The Freedom of Information Lead

The Director of Standards will act as the FOI Lead at Board Level to:

- Ensure organisational compliance with the Act
- Ensure processes are implemented to maintain currency of this policy and the issue of a current Trust Publication Scheme
- Act as the Champion for FOI awareness throughout the organisation
- Ensure that the general public and Trust staff have access to information about their rights under the Act
- Ensure that a process is in place to assist with investigations into complaints and appeals

- Ensure that sufficient resources, processes and structures are in place to administer FOI.

4.3 Directors

All Directors are vicariously responsible for FOI responses and updates to the Publication Scheme relating to information held by their Directorate. They must nominate Directorate Leads who are responsible for being the first point of contact for FOI matters and for responding to requests for information. They will be consulted when requests for information may pose a risk to their Directorates reputation or the reputation of the Trust and advise people who may be affected by the release of information.

4.4 Communications Team

The Communications Team will be made aware of requests for information by media companies and the press, and any other requests that when responded to may have an adverse impact on the reputation of the Trust. This will enable the Communications Team to be aware of the requests that are being received and the responses given, to prepare, where appropriate, press releases and to advise members of staff who may be asked to comment on news stories resulting from responses to FOI requests.

4.5 The Information Governance Manager

The Information Governance Manager will advise and support the FOI Officer and staff who are responsible for responding to requests where appropriate. Where necessary appropriate legal advice will be sought in respect of the decision as to whether or not to disclose the information.

4.6 The Freedom of Information Officer

The FOI Officer, supported by Information Governance Manager and Team, is responsible for:

- Providing regular updates to Directorate Leads regarding FOI, EIR and Re-use of Information legislation
- Ensuring that all requests for information are validated, recorded and co-ordinated in accordance with current procedures which allow responses to be sent to the applicant within legal timescales
- Performing a technical check of the managers responses for completeness prior to sending to the applicant
- To advise and support staff responding to requests including the possible application of exemptions
- Providing advice and assistance to staff and those who propose to make, or have made, requests for information under the Act
- To devise and maintain standard documentation including response letters
- Create and publish a Disclosure Log
- Establishing written procedures for dealing with FOI requests
- Development and maintenance of the Trust Publication Scheme

- Ensuring appropriate corporate briefing and training is developed, available and publicised
- Ensuring appropriate briefing and training is developed, available and regularly provided for Directorate Leads in respect of their FOI responsibilities
- Providing statistical information as required

The FOI Officer will be responsible for providing information on FOI issues to the Information Governance Steering Group via routine and ad hoc reports as required.

4.7 Directorate Leads

Directors will be responsible for nominating Directorate Leads who will be responsible for reviewing the Publication Scheme, co-ordinating full and complete responses to FOI requests between their Directorate and the FOI Officer.

Directorate Leads are responsible for:

- Assisting with reviewing the Publication Scheme
- Ensuring that appropriate information to be included in the Scheme is provided to the FOI Officer to keep the Publication Scheme up to date
- Ensuring there is a process in place for providing information held in the Publication Scheme to the applicant within five working days
- Ensuring that staff adhere to this policy
- Ensuring that information requests are dealt with on a timely basis and in accordance with procedures
- To act as point of contact within their Directorate for staff members responsible for responding to requests with regard to any queries about the disclosure of information or whether exemptions from disclosure may apply
- To act as an escalation point in the event of problems and queries
- To promote awareness of the FOI Act.

4.8 All Staff

All staff are expected to understand and comply with this policy, and:

- FOI requests received by staff must be forwarded to the FOI Office directly within one working day by e-mail to nyy-pct.foi@nhs.net . Where a request is received by hard copy letter, the date of receipt by the PCT should be clearly marked on the request letter and this should be scanned and sent to the above email address. **Note the Trust has only 20 working days to respond to a request for information.** Where staff are unsure of whether a request for information needs to be logged as a FOI request they must contact the FOI Officer for advice (see 5.1 below for what qualifies as an FOI request)
- Where required to, by the Directorate FOI Lead, respond fully to requests for information within the legal timescales

- Responses must take into account all exemptions to the provision of information under the Act (support can be provided by the Directorate Lead and / or the FOI Officer)
- Provide advice and assistance to those who propose to make, or have made, requests for information
- Must be aware of the FOI legislation, and their duties and responsibilities under the Act.
- All staff should be aware that under section 77 of the FOI Act it is a Criminal Offence to alter, deface, block, erase, destroy or conceal any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled. To do so can result in a fine of up to £5,000 and up to 2 years in prison.

A staff information leaflet and booklet are also available from the Information Governance pages of the staff website:

www.nyypct.nhs.uk/Corporate/InformationGovernance/PoliciesGuidelines.htm

5.0 Information Requests

5.1 Freedom of Information Requests

To be classed as a FOI request the request must:

- Be made in writing (this includes by electronic means such as e-mail)
- State the applicant's name and include an address for correspondence (this can be an e-mail address)
- Describe the information being requested to enable the Trust to clearly identify the information required. Where this is not clear the Trust must seek clarification from the applicant.

It should be noted that requests do not need to mention the FOI Act or contain a reason for requesting the information or be addressed to the FOI Officer.

Further information is available in the staff leaflet and booklet available from:

www.nyypct.nhs.uk/Corporate/InformationGovernance/PoliciesGuidelines.htm

A distinction must be made between requests for information and routine correspondence. Requests for information that can be provided without any question (e.g. leaflets, other Trust public / patient material, recruitment brochures, press releases) should be treated as business as usual.

It is also important to point out that the Freedom of Information Act 2000 only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.

Where a request does not give sufficient detail to enable the Trust to process the request i.e. meet the criteria detailed above, then staff who are instructed by Directorate Leads to respond to any such request must contact the applicant and advise them of the information that is required to make their

application, offer assistance to frame the request, and provide the address details below:

Requests should be sent to:

The Freedom of Information Office
NHS North Yorkshire and York
FOI Office
4th Floor
Ryedale Building
Piccadilly
York YO1 9PE
Email: nyy-pct.foi@nhs.net

5.2 Environmental Information Requests (EIRs)

Procedures for dealing with EIRs will be the same as FOI except:

- Requests can be made verbally or in writing.

Where made verbally, staff receiving the request must record the following:

- The name of the applicant
- The date
- The information required
- An address for correspondence and contact details

This must then be forwarded to the FOI Officer. The request will be logged as an EIR request and processed under the Environmental Information Regulations 2004

- That environmental information can be considered for release if the Trust is in possession of the information regardless of whether it is held on behalf of someone else
- EIR response times can only be extended up to 40 days where the request is complex or voluminous
- All exemptions will need to be subject to a public interest test

Annex D provides a definition of Environmental Information.

5.3 Publication Scheme Requests

Where a request, whether written or verbal, relates to information held in the Publication Scheme, the Directorate Leads will be responsible for ensuring there is a process in place for providing the information to the applicant within five working days.

6.0 **Application of Exemptions to the Disclosure of Information**

- 6.1 The Act lists 23 exemptions to disclosure. Some exemptions are absolute and others are subject to a public interest test (see section 7.0 below).

- 6.2 The Trust will apply the exemptions identified in the legislation fairly and evenly, and will explain the reasoning for the application of an exemption(s) as required by legislation.

7.0 The Public Interest Test

- 7.1 Where it is intended to apply a qualified exemption the Trust will undertake and document a 'public interest test'.

This means balancing the considerations in favour of disclosure against non-disclosure of information.

If the public interest in withholding the information outweighs the public interest in disclosing it, it should be withheld.

When a decision is made to withhold information the reasoning as to why that decision was made must be recorded e.g. a demonstration of the potential harm in disclosing the information must be made.

Where the interests are evenly balanced the Information Commissioner would usually expect the information be disclosed.

8.0 Complaints and Requests by the Applicant for a Review of the Response

- 8.1 Where the applicant wishes to ask for an Internal Review of the information disclosed or the decision not to disclose some or all of the information, the request should be made in writing to the Chief Executive's Office who will ensure an Internal Review is instigated.
- 8.2 Reviews must be undertaken by a duly appointed senior member of staff who was not involved in the original decision on whether to disclose the information.
- 8.3 The Internal Review stage must be a fair and impartial review of the decisions made during the original consideration for the release of information.
- 8.4 Internal Reviews should be completed within 20 working days from the time the request for the review was received. In exceptional circumstances where the review is deemed complex, this may be extended to 40 days. The applicant should be informed of the time-scale within which the review will be undertaken.
- 8.5 The applicant must be informed of the outcome of the review. Where the review overturns an original decision to withhold the information, the information should be disclosed to the applicant as soon as possible after the completion of the review.

8.6 Where the original decision is upheld, the Trust is not obliged to undertake any further review. However the applicant must be informed of their right of appeal to the Information Commissioner.

8.7 Full records of the progress of the review must be kept and any outcomes as a result of the review recorded. This will be subject to review by the Information Commissioner in any further investigations.

9.0 Personal Information and Health Records

9.1 Requests made by an applicant to review their own personal information and / or health records will not be disclosed under this procedure. All requests for personal information will be dealt with under the Data Protection Act 1998 or Access to Health Records Act 1990 as appropriate. See the PCT Subject Access Request Policy for guidance.

10.0 Copyright and Re-use of Information

10.1 Trust information is subject to copyright protection and Database Rights unless stated otherwise. If any person uses the Trust's copyright material, the source of the material must be quoted and copyright status acknowledged. Unless expressly indicated on the material to the contrary, it may be reproduced free of charge for sole use, including for non-commercial research purposes, news reporting, in any format or medium, provided it is reproduced accurately, is not used in a misleading manner and is not used for commercial gain.

10.2 For information where the copyright is owned by another person or organisation, applications must be made to the copyright owner to obtain their permission.

10.3 Publishing the information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2005 and will require permission of the Trust and may require a fee.

11.0 Disclosure Log

11.1 A disclosure log will be published on the public website each month. The disclosure log will provide brief details of each request received and whether information was fully or partially disclosed or was withheld.

11.2 The disclosure log can be used by potential applicants for information to enable them to request the same information and receive a speedy response. Likewise by those responding to requests for information to ensure a consistency of approach in responding and to ensure that work is not duplicated.

12.0 Fees

- 12.1 The Trust will, in some circumstances, charge for releasing information in accordance with regulations.
- 12.2 If there is a fee and it is not paid within 3 months we will not provide the information. Where a fee is payable, information will not be released until such fee is received. Please see the Fee Statement at Annex C.

13.0 Duty to Advise and Assist

- 13.1 All public bodies have a duty to assist applicants in requesting information. This could involve assisting applicants in making their requests by suggesting what information is available and / or contacting applicants who have made broad requests in order to specify information required so that it may be identified. In circumstances where the Trust does not hold the information requested, applicants should be advised of the organisation that does, where known, and contact details supplied to them or if the applicant prefers, we can transfer the request on the applicant's behalf.

14.0 Consultation, Approval and Ratification Process

- 14.1 As part of the consultation process this policy has been approved by the Information Governance Steering Group.
- 14.2 This policy has been approved and ratified by the Governance Committees of NHS North Yorkshire & York and NHS North Yorkshire & York (Community & Mental Health Services).

15.0 Dissemination and Implementation

- 15.1 This policy will be available to all staff via the Trust staff website. Training will be given to all staff as part of corporate induction and statutory and mandatory training.
- 15.2 Awareness of this policy will be made via a cascade system from the designated staff member for policy management to all service managers for dissemination to staff as well as by the Trust electronic staff newsletter.

16.0 Monitoring & Review

- 16.1 Regular and ad hoc reports will be made to the Information Governance Steering Group in respect of the numbers of FOI requests received by Directorate, information disclosed and withheld, those that breach the time limit and requests for reviews for decisions on information not disclosed.
- 16.2 This policy will be reviewed annually. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

17.0 Training and Awareness

- 17.1 The Information Governance Team will agree an appropriate level of Information Governance training for PCT staff at corporate induction and FOI will be included in training materials and delivered. FOI training is also to be included in the statutory and mandatory Information Governance training.
- 17.2 An electronic FOI Toolkit is available from the Information Governance pages of the Trust staff website to assist staff:
www.nyypct.nhs.uk/Corporate/InformationGovernance/FOIToolkit.htm

18.0 Data Protection Act 1998 Statement

- 18.1 The Data Protection Act 1998 protects personal data, which includes information about staff, patients and carers. The NHS relies on maintaining the confidentiality and integrity of its data to maintain the Trust of the community. Unlawful or unfair processing of personal data may result in the Trust being in breach of its Data Protection obligations.

19.0 Records Management & Document Control including Archiving Arrangements

- 19.1 Records provide evidence and information about the business activities of the Trust and are corporate assets of the Trust. This policy will therefore be retained in line with the Part 2 of the *Records Management: NHS Code of Practice* (Department of Health, 2009 (2nd Edition) (Annex D2: Business and Corporate (Non-Health) Records Retention Schedule)) and the Trust Records Management Policy. Compliance with this code will ensure that the Trust's records are complete, accurate and provide evidence of and information about the Trust's activities for as long as is required.

20.0 Equality & Diversity Statement

- 20.1 The PCT recognises the diversity of the local community and those in its employ. Our aim is therefore to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, gender reassignment or employment status. The PCT recognises that equality impacts on all aspects of its day to day operations and has produced an Equality and Human Rights Strategy and Equal Opportunities Policy to reflect this. All strategies, policies and procedures are assessed in accordance with the Equality & Diversity Assessment Toolkit, the results for which are monitored centrally.

21.0 Discipline

- 21.1 Breaches of this policy will be investigated and may result in the matter being treated as a disciplinary offence under the PCT's disciplinary procedure.

22.0 Associated Documentation

- PCT Publication Scheme
- PCT FOI Toolkit
- PCT Records Management Policy
- PCT Data Protection Policy
- PCT Subject Access Request Policy
- PCT Information Governance Policy
- PCT Complaints Policy
- PCT Disciplinary Procedure

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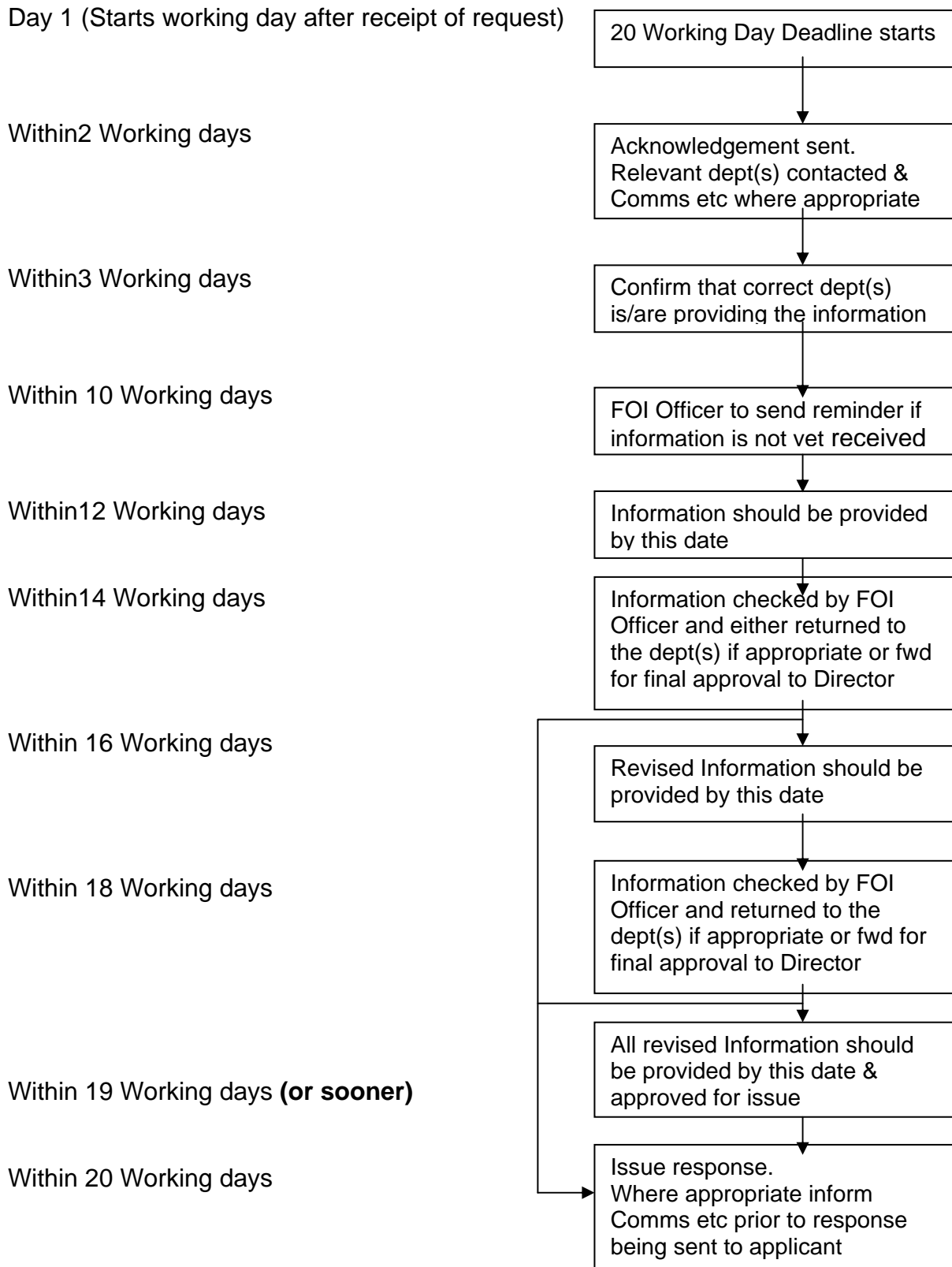
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The Information Commissioner's Office www.ico.gov.uk

FOI FLOWCHART – KEY DEADLINES



EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:

- a) **Absolute**, which does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure
- b) **Qualified** by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclosure information.

With the exemption of section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The **Absolute** exemptions under the Act are:

Section (of the Act)	Exemption
21	Information accessible to applicant by other means
23	Information supplied by, or relating to, bodies dealing with security matters.
32	Court Records
34	Parliamentary Privilege
36	Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
40	Personal Information (where disclosure may contravene the Data Protection Act 1998), see section of the policy
41	Information provided in confidence (see section of the policy)
44	Prohibitions on disclosure.

The **Qualified** exemptions (which require the public interest test) are:

Section (of the Act)	Exemption
22	Information intended for future publication
24	National Security
26	Defence
27	International Relations
28	Relations within the United Kingdom
29	The Economy
30	Investigations and proceedings conducted by public authorities
31	Law enforcement
33	Audit Functions
35	Formation of Government Policy
36	Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
37	Communications with Her Majesty etc. and honours
38	Health and Safety
39	Environmental Information
42	Legal Professional Privilege
43	Commercial Interests

FEE STATEMENT

The Trust recognises its responsibility as a Public Body to conduct its business in an open and transparent manner. Wherever possible the Trust will proactively make readily accessible to the public information which is considered to be of particular interest through its website, the media, leaflets, prospectus etc.

This approach will therefore satisfy much of our public's interest in our role and activity. Where information is required which is of a detailed or specific nature and has not been published by the Trust then a specific request through the freedom of information process will ensure a response. In the majority of cases the information will be reported back to the person making the request at no charge to themselves.

The charging policy is intended only to cover requests which require quite intensive resources in order to prepare and process a response.

The following statement is based on guidance given in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Charges relate to whether costs exceed or fall under the appropriate limit.

The Appropriate Limit

The appropriate limit is set at £450 for NHS organisations.

The appropriate limit is the point at which the Trust can refuse to process a request due to excessive costs and staff time.

Costs are calculated on the amount of time staff would take in:

- Determining whether the Trust holds the information requested,
- Locating the information or documents containing the information
- Retrieving such information or documents, and
- Extracting the information from the documents containing it

The rate for staff time is calculated at £25 per hour. For example, where it is estimated that it would take 18 hours of staff time in providing the information, this would work out at £450 and would have reached the appropriate limit.

1. Requests for information that are estimated to fall below the appropriate limit.

Where the estimated costs fall beneath the appropriate limit which the majority of cases should, the Trust will only charge for the following when providing that information:

- Postage
- Printing and photocopying

The cost of photocopying and printing will be set in most cases at no more than 10 pence a sheet.

Where the cost of providing information comes to less than £20, the fee will be waived by the Trust.

The Trust will not charge for any labour costs i.e. staff time spent undertaking tasks as detailed above in section headed "The Appropriate Limit".

2. Requests for information estimated to cost more than the appropriate limit.

The Trust will deal with these on a case by case basis in which it will decide either to:

- Refuse to process the actual request
- Proceed with the request and charge the full amount i.e. £25 an hour plus postage and photocopying costs
- Contact the applicant to see if it is possible to reduce the amount of information required or summarise it sufficiently to reduce the costs under the appropriate limit.

DEFINITION OF ENVIRONMENTAL INFORMATION

Any information in written, visual, aural, electronic or any other material form on:

- (a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements
- (b) Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a)
- (c) Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements
- (d) Reports on the implementation of environmental legislation
- (e) Cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

DISCLOSURE OF STAFF INFORMATION WHEN RESPONDING TO FREEDOM OF INFORMATION REQUESTS

1.0 Introduction

Information requests may be made to the PCT under the Freedom of Information Act 2000 (FOIA). These requests may be for specific details about Trust employees or request information that may include employee's information e.g. minutes of meetings.

The Trust is fully committed to public openness. It recognises that the FOIA will fail to deliver its intended benefits if information about the activities of public authority staff, such as those employed by the Trust is withheld without good reason.

The Trust, however, also recognises that it holds a great deal of sensitive, personal information about its employees that it would be wrong to disclose in response to a request made under the FOIA.

The Trust has developed these principles based on guidance given by the Information Commissioners Office for dealing with FOI requests in order to maintain common law confidentiality and meet the requirements of the Data Protection Act 1998 to act fairly and lawfully.

2.0 Scope

This guidance applies to dealing with disclosure of staff related information in response to FOI requests. It does not cover requests made outside the FOIA which must continue to be dealt with in accordance with common law, employment law and relevant legislation e.g. Human Rights Act, Data Protection Act.

It does not apply to the disclosure of anonymised, aggregated or other information that does not identify individual employees.

3.0 Management of requests

Requests made under the FOIA are co-ordinated by the PCT Freedom of Information Officer in conjunction with the Information Governance Manager. Each Directorate is responsible for responding to requests for information it holds.

Guidance can be sought from the FOI Officer (contact details below) regarding the application of exemptions.

By email: nyy-pct.foi@nhs.net
By tel: 01904 601618

4.0 Personal information and disclosure

Personal information is exempt from disclosure under the FOIA if disclosure would lead to a breach of the Data Protection principles, for example if the disclosure would be unfair to an employee. This exemption is intended to ensure that greater public openness does not compromise personal privacy.

The FOIA contains other exemptions that could protect information about Trust staff from disclosure. For example, information will not be disclosed if this would constitute a breach of

confidence, or would endanger any employee. The Trust is also bound by human rights principles. This means that a distinction must be drawn between an individual's working and private life, it must respect its employees' rights to respect for their private and family life in deciding whether to disclose information about them.

5.0 Informing staff

Prior to disclosing the Trust will satisfy itself that there is a duty to disclose and will avoid disclosing more information than legally obliged to.

Where practicable, the Trust will inform any employees concerned prior to deciding whether to disclose any information about them. An employee's objection to the disclosure of information will be taken into account. However, if a disclosure is in the public interest, does not breach human rights or data protection principles and does not fall within an exemption in the FOIA, the disclosure may take place despite an employee's objection to it.

A staff information leaflet is available on the intranet which briefly covers these points – see '*Staff Rights, Staff Information – A guide for staff on the Trust's use of their personal data*'.

6.0 Information that will and will not be normally disclosed

The appendices give examples of employee information, held by the Trust, divided into categories according to the likelihood of the information being released when a request is made.

The Trust will normally disclose work-related information about senior staff or those in a public facing role. Information that is genuinely personal, sensitive or not work-related, will not normally be disclosed. It is less likely that information about more junior staff or those who do not deal directly with the public will be disclosed. Examples of each are given in the annexes:

Appendix 1: Information about senior staff, i.e. A4C Band 7 or above and all medical staff except F1 and F2 doctors.

Appendix 2: Information about more junior staff, i.e. A4C Band 6 and below and F1 and F2 doctors.

The Trust recognises that a distinction based on grade will not always be appropriate. In some cases, for example where an employee of junior grade incurs expenses, it may be appropriate to disclose that information, as would be the case with an employee of a more senior grade.

The appendices are not exhaustive but show a generic breakdown of the information the Trust typically holds about its employees.

7.0 Further Information

Any comments or questions about the Trust procedure on the disclosure of information about its employees should be addressed to the Information Governance Manager or Associate Director of Human Resources.

Further information regarding the FOIA is available from the Information Commissioner's Office www.ico.gov.uk.

8.0 References / Bibliography / Sources

The Freedom of Information Act 2000
www.opsi.gov.uk/acts/acts2000/20000036.htm

The Public Records Act 1958
www.opsi.gov.uk/si/si2001/20014058.htm

The Data Protection Act 1998
www.opsi.gov.uk/acts/acts1998/19980029.htm

The Human Rights Act 1998
www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_11998

The Common Law Duty of Confidentiality
www.dh.gov.uk/en/Policyandguidance/Informationpolicy/Patientconfidentialityandcaldicottguardians/DH_4084181

The NHS Confidentiality Code of Practice
www.dh.gov.uk/en/PolicyAndGuidance/InformationPolicy/PatientConfidentialityAndCaldicottGuardians/DH_4100550

Information Commissioner's Office www.ico.gov.uk website

Appendices

1. Agenda for Change Band 7 or above and all medical staff except F1 and F2 doctors.
2. Agenda for Change staff below Band 7, F1 and F2 Doctors.

AGENDA FOR CHANGE BAND 7 OR ABOVE AND ALL MEDICAL STAFF EXCEPT F1 AND F2 DOCTORS

NORMALLY DISCLOSED	NOT NORMALLY DISCLOSED
<ul style="list-style-type: none"> Information already published by the Trust such as salaries of the Trust Board Members. 	<ul style="list-style-type: none"> Personal details obtained by Human Resources as part of the recruitment process, e.g. CVs, the content of job application forms, references, non work-related qualifications, work histories.
<ul style="list-style-type: none"> Photographs and biographical information relating to staff members whose role means that they are likely to be the subject of publicity. 	<ul style="list-style-type: none"> Photographs and biographical information relating to staff members whose role means that they are NOT likely to be the subject of publicity, unless they have consented to this.
<ul style="list-style-type: none"> Names, job titles, work email addresses and work telephone numbers. 	<ul style="list-style-type: none"> Information that is not work-related, for example personal financial details, eligibility for benefit, sickness records, and accident book entries, other medical information about Trust employees or individuals associated with them, e.g. their family members.
<ul style="list-style-type: none"> Years in post, previous positions held at the Trust. 	<ul style="list-style-type: none"> Details of appraisals and other staff interviews, e.g. disciplinary proceedings.
<ul style="list-style-type: none"> Position in corporate structure, roles, duties, work-related responsibilities. 	<ul style="list-style-type: none"> Home addresses / contact details, next of kin information, personal interests and other non work-related information.
<ul style="list-style-type: none"> Salary levels or pay bands (not net salary or a specific salary spine point). 	<ul style="list-style-type: none"> Net salaries and specific information about pension entitlements or other financial benefits (other than that which is detailed in the Annual Report).
<ul style="list-style-type: none"> Summaries of expense claims, amounts claimed by named employees. (Not details of hotels / restaurants used, journeys or itineraries). 	<ul style="list-style-type: none"> Details of non work-related examinations, qualifications or training undertaken whilst employed at the Trust or previously.
<ul style="list-style-type: none"> Vocational training or secondments undertaken whilst employed at the Trust. 	<ul style="list-style-type: none"> Annual leave records, details of flexible hours leave or special leave.
<ul style="list-style-type: none"> Qualifications relevant to carrying out Trust duties. 	<ul style="list-style-type: none"> Security clearance information.
<ul style="list-style-type: none"> Business-related entries in office diaries or schedules. 	<ul style="list-style-type: none"> Private entries in office diaries or schedules, e.g. medical / personal appointments

AGENDA FOR CHANGE STAFF BAND 6 AND BELOW AND FI AND F2 DOCTORS

NORMALLY DISCLOSED	NOT NORMALLY DISCLOSED
<ul style="list-style-type: none"> Names, job titles, work email addresses and work telephone numbers of staff in a public-facing role. 	<ul style="list-style-type: none"> Names, work email addresses and work telephone numbers of staff NOT in a public-facing role.
<ul style="list-style-type: none"> Job Position in corporate structure. 	<ul style="list-style-type: none"> Personal details obtained by Human Resources as part of the recruitment process e.g. CVs, the content of job application forms, references, non work-related qualifications, work histories.
<ul style="list-style-type: none"> Salary levels or pay bands (not net salary or a specific salary spine point). 	<ul style="list-style-type: none"> Information that is not work-related, for example personal financial details, eligibility for benefit, sickness records, and accident book entries, other medical information about Trust employees or individuals associated with them, e.g. their family members.
<ul style="list-style-type: none"> Summaries of expense claims, amounts claimed by named employees. (Not details of hotels / restaurants used, journeys or itineraries.) 	<ul style="list-style-type: none"> Details of appraisals and other staff interviews, e.g. disciplinary proceedings.
<ul style="list-style-type: none"> Roles, duties, work-related responsibilities of staff e.g. as advertised in job adverts and job descriptions 	<ul style="list-style-type: none"> Net salaries and specific information about pension entitlements or other financial benefits.
	<ul style="list-style-type: none"> Photographs and biographical information unless the employee has consented to this.
	<ul style="list-style-type: none"> Home addresses / contact details, next of kin information, personal interests and other non work-related information.
	<ul style="list-style-type: none"> Details of non work-related examinations, qualifications or training undertaken whilst employed at the Trust or previously.
	<ul style="list-style-type: none"> Annual leave records, details of flexible hours leave or special leave.
	<ul style="list-style-type: none"> Security clearance information.
	<ul style="list-style-type: none"> Private entries in office diaries or schedules, e.g. medical / personal appointments.
	<ul style="list-style-type: none"> Years in post, previous positions held at the Trust.
	<ul style="list-style-type: none"> Vocational training or secondments undertaken whilst employed at the Trust.
	<ul style="list-style-type: none"> Qualifications even if relevant to carrying out Trust duties.