

# FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS AWARENESS AND HANDLING POLICY

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# 1. INTRODUCTION

## 1.1. Rational

Harrogate and District NHS Foundation Trust (hitherto referred to as 'HDFT 'or 'the Trust') recognises the importance of the Freedom of Information (FOI) Act 2000 and the Environmental Information Regulations (EIR).

The Freedom of Information Act came into force on 1 January 2005 and deals with access to official information. The Act provides individuals or organisations with the right to request information held by a public authority which they can do in writing.

The legislation is governed by the Information Commissioner's Office (ICO) via [www.ico.gov.uk](http://www.ico.gov.uk).

Certain categories of public information are covered by the Environmental Information Regulations (2004). The Regulations cover information related to the environment such as emissions, land use, pollution, waste disposal etc. The regulations are similar to FOI but there is an even greater presumption of disclosure, exceptions are fewer and requests can be made verbally.

This policy outlines the Trust's commitment to providing information requested under the FOI Act and the EIR, provision of the statutory publication scheme and ensuring information requests can be fulfilled in a structured and timely manner. This latter point is particularly relevant with consideration to the 20 working day legal limit for responding to requests for information.

## 1.2. Scope

The scope of this policy relates to all activity to both maintain the Trust's approved FOI publication scheme as well as the process to respond to, and manage requests for information under the Act.

## 1.3. Principles

The Trust will establish and maintain policies to ensure compliance with the Freedom of Information Act. At all times, Trust staff will be required to respond to requests for information with due attention to the legal requirements of the Act and assist the FOI Officer with diligence at all times.

# 2. POLICY

## 2.1. Publication scheme

A publication scheme is a public commitment to make certain information routinely available. The publication scheme sets out categories of information that the Trust undertakes to publish, it is based on the ICO's NHS Model Publication Scheme. Classes of information should not be added or removed without the approval of the Information Commissioner. The current classes of information are:

- Who we are and what we do;
- What we spend and how we spend it;
- What are our priorities and how are we doing;
- How we make decisions;
- Our policies and procedures;

- Lists and registers; and,
- The services we offer.

The publication scheme can be accessed via the HDFT website at [www.hdft.nhs.uk](http://www.hdft.nhs.uk) and using the links to the FOI section.

The Scheme as a whole will be reviewed annually by the FOI Officer, and the information contained within a scheme will be reviewed regularly to ensure it is accurate and up to date.

Documents available through the publication scheme are final, approved versions only. It is Trust policy not to include draft documents in the publication scheme although these may be releasable under FOIA or EIR.

## **2.2. Requests for information**

Requests for information not routinely provided via the publication scheme can be received by the Trust in writing (by letter or email) to the FOI Officer. A designated FOI email address has been established for this purpose; [foi@hdft.nhs.uk](mailto:foi@hdft.nhs.uk). Requests for information under EIR can be made verbally.

In accordance with the FOI Act and the EIR the Trust will provide advice and assistance to applicants and would-be applicants. This may include giving guidance about how to access the information through other routes.

Requests for personal information are not covered by the FOI Act and at such a time requests of this nature are received they will be forwarded to the Trust's Data Protection Officer.

Requests under FOI or EIR must be acknowledged by the third working day following the date of receipt of the request and responded to by the twentieth working day following receipt of the request.

All FOIs and EIRs received by HDFT will be logged on the Trust's FOI register as detailed in section 2.8.

If the FOI or EIR request is from an MP / Councillor / media organisation, the FOI team will alert the Trust's communications team.

If requests for information under the FOI Act are received by any other colleague in the Trust, other than the FOI Officer, these should be forwarded to the FOI team immediately (via [foi@hdft.nhs.uk](mailto:foi@hdft.nhs.uk)). Responses to FOI requests will only be made by the FOI Officer.

On receipt of a request the Trust may need to clarify certain elements of the request and at such a time, in accordance with the terms of the Act, the 20 working day limit will start once the clarification has been received.

If the request includes information which relates directly to another organisation the FOI team will inform an appropriate manager at that organisation as soon as possible.

'Round Robin' requests for information will be identified through collaboration with FOI Officers and Information Governance Teams at other Trusts and CCGs.

'Freedom of Information Requests' will be a monthly agenda item at Executive Director Team meetings. At this meeting, the FOI Officer will highlight any requests of which they feel Directors need to be made aware.

Further information about the process for handling FOI requests can be found in appendix 3.

### **2.3. Accessing information**

The Executive Assistant to Chairman and Chief Executive will liaise with team managers to obtain the information that the applicant has requested. Staff will be given 15 working days to deal with this request. Any problems should be immediately brought to the attention of the FOI team. .

FOI legislation requires a public authority to provide information in the manner requested if this is reasonably practicable. This will include the following scenarios:

- The Trust presents information it holds in the form of a list or schedule.
- Compiling an answer to a request involves simple manipulation of information already held in Trust files.
- The Trust extracts information from an electronic database by searching it in the form of a query.

The Trust does not have to create new information to respond to requests. If extracting the information relevant to the request requires a high level of skill and judgement, this would amount to creating new information not already held.

### **2.4. Supplying information**

If no exemptions apply and there are no fees or charges to be levied a draft response letter will be prepared by the Executive Assistant to Chairman and Chief Executive for verification by the FOI Officer. Responses will be shared with the communications team if the FOI is from an MP, Councillor or a media organisation.

As advised by the ICO, HDFT has adopted a standardised approach to the supply of information / issuing responses via the use of a letter template for use in either word or email format. These are held by the FOI team on the Trust's IT system.

Information must generally be provided in the format outlined by the applicant e.g. by email or hard copy, unless a fee is applicable for the copying and provision of the information (see section 2.5 Fees below).

Any information supplied under FOI/EIR continues to be protected by the Copyright, Designs and Patents Act 1988. A copy of the below wording must be included whenever information is released under FOI/EIR.

*“The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other reuse, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by HDFT will have been produced by government officials and will be Crown Copyright. You can find details on the arrangements for re-using Crown Copyright on HMS Online at: <http://www.hmso.gov.uk/copyright/licences/click-use-home.htm>.*

*Information you receive which is not subject to Crown Copyright continues to be protected by the copyright of the person, or organisation, from which the information originated. You must ensure that you gain their permission before reproducing any third party (non Crown Copyright) information.”*

## **2.5. Fees**

A public authority to whom a request for information is made may notify the applicant requesting the information that a fee is applicable (this is referred to in the Act as a “fees notice”) to comply with the request.

Where a fees notice has been given to the applicant, the public authority is not obliged to comply with a request unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

Fees must be determined by the Trust in accordance with regulations outlined in the Act.

## **2.6. Refusing a request; exemptions**

A request for information may be refused if:

- the information is exempt under the FOI Act or EIR;
- the cost of compliance exceeds the appropriate limit under FOI or the request is manifestly unreasonable under EIR; or
- the request can be demonstrated to be vexatious or repeated under the FOI Act or EIR.

Certain information is exempt from disclosure under the Act under the following areas:

- Commercial Interest (Section 43)
- Communications with Her Majesty and the Awarding of Honours (Section 37)
- Defence (Section 26)
- Economy (Section 29)
- Effective Conduct of Public Affairs (Section 36)
- Health and Safety (Section 38)
- Information contained in Court Records (Section 32)
- Information intended for Future Publication (Section 22)
- Information provided in Confidence (Section 41)
- Information reasonably accessible to the Applicant by other Means

- (Section 21)
- International Relations (Section 27)
- Investigations (Section 30)
- Law Enforcement (Section 31)
- Legal Professional Privilege (Section 42)
- Parliamentary Privilege (Section 34)
- Personal Information (Section 40)
- Policy Formulation, Ministerial Communications, Law Officers' Advice and the Operation of Ministerial Private Office (Section 35)
- Prohibitions on Disclosure (Section 44)
- Public Audit (Section 33)
- Relations within the UK (Section 28)

Full details of all exemptions are included in the Act itself, in addition, the ICO website ([www.ico.org.uk](http://www.ico.org.uk)) provides detailed guidance on exemptions under the Act and provides relevant guidance to Trusts in how to respond in such cases.

The Act specifies a number of different exemptions and when they can be applied. There are two types of exemption: absolute and qualified:

- An absolute exemption means that the Trust is exempt from the need to confirm or deny. This means that the Trust does not have to admit or deny holding the information.
- A qualified exemption means that the Trust has to consider the public interest before making the decision. The Trust will endeavour to use these exemptions appropriately and sparingly.

Any decision to use the exemptions will be taken by the FOI Officer following advice and consultation with senior colleagues as appropriate.

The public interest must be considered in every case where a qualified exemption applies. The Information Commissioner states that “In effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.” The public interest will vary with each request and the exemption being considered. It may often include ensuring honesty, accountability, transparent decision making and the absence of bias. The Trust will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary (this may include colleagues and legal advice). The public interest does not include protecting an authority or individual from embarrassment.

The applicant will be informed in writing of the decision within 20 working days of the request and will be told the following:

- the exemption/exception(s) that has been applied;
- the justification for the use of the exemption/exception/s and the application of any public interest test;
- details of the Trust’s complaint procedure if they are not satisfied with the outcome; and,
- details of the right to appeal to the Information Commissioner.

If the exemption under FOI is absolute, then the Trust is exempt from the duty to confirm or deny (that is the duty to tell the applicant whether or not the organisation actually holds the information).

In these circumstances, the applicant will be informed within 20 working days of the following:

- the fact that the Trust is exempt from the duty to confirm or deny;
- specify the exemption/exception in question; and,
- state why the exemption/exception applies (unless it would be otherwise apparent).

It is acknowledged that it can take more than 20 working days to reach a decision as to whether all or some of the information can be provided especially in cases where the public interest has to be considered. As a result the Trust will inform the applicant of this delay and give a reasonable estimate of the date by which a decision is expected.

## **2.7. Re-Use**

The Re-Use of Public Sector Information Regulations 2015 gives the public and the private sector the right to re-use public sector information which the Trust produces as part of our Public Task.

The Re-Use of Public Sector Information (RoPSI) regulations govern the re-use of information created and used by Public Authorities in the UK as part of fulfilling their public task. Re-using the information means to use it for a purpose other than the initial public task it was produced for. Access to the corporate information of Public Authorities is provided under Freedom of Information legislation. The RoPSI regulations do not change the provisions for accessing information but provide the public and the private sector with a framework to re-use this information once it has been disclosed.

HDFT's public task is the core roles and functions as defined by legislation and regulations. Information on the public task, such as the services provided and key functions, can be found on the Trust's website. Information which is not within the scope of our public task is not covered by RoPSI regulations.

Applicants who wish to make a request for re-use under the RoPSI regulations should contact the Trust in writing (preferably by email), include their name and address for correspondence, details of the information they wish to re-use, and the purpose of intended use.

Where the Trust permits re-use of information under the Re-Use of Public Sector Information Regulations 2015 it is licensed under the [Open Government Licence](#).

The Trust will, as a matter of routine, not charge for the re-use of information beyond reasonable [disbursement costs](#) (printing, postage, etc.) as per the Freedom of Information process.

If the standard practice of allowing free-of-charge, Open Government Licence governed re-use will not apply to an application for re-use, this will be discussed with and communicated to the applicant as soon as it becomes apparent.

## **2.8. Recording request information and responses**

An ongoing log of requests will be held by the FOI Officer and contain the following information:

- The date the request was received;
- When day one of the 20 working day clock begins and when day 20 will fall;
- Other Trust departments / individuals contacted regarding the request;
- The date the response was made;
- How many days taken to fulfil the request; and
- Details of any exemptions applied.

A report containing this information and analysis of the requests received and responded to will be published on an annual basis by the FOI Officer. The report will be presented at a Board of Directors meeting.

## **2.9. Appeals and complaints**

On the standard response letter/email, all those who request information will be advised that they can make an appeal or complaint to the Trust in relation to the manner in which their request has been handled.

Initial complaints about the handling of a request for information will go to the Trust who will follow an agreed Review procedure (see appendix D).

Applicants dissatisfied with the response they have received to a request for re-use, or the conditions applied, can make a formal complaint.

Complaints should be in writing, stating the nature of the complaint in detail. Complaints should be submitted within 60 days of the date of the Trust's response to the request

In addition, if they believe the Trust has not dealt with their complaint properly, they can contact the Information Commissioner. They are advised to do this as soon as possible or in any case within two months following the final response of the Trust. This can be done online at [www.ico.gov.uk](http://www.ico.gov.uk) or in writing to FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

# **3. ROLES AND RESPONSIBILITIES**

## **3.1. Chief Executive**

The Chief Executive is responsible for ensuring the Publication Scheme is in place and that processes are followed to respond to FOI requests as outlined in this policy.

## **3.2. FOI Officer**

The Freedom of Information Officer is the Company Secretary. The Freedom of Information Officer ensures appropriate responses to all Freedom of Information requests within the allocated timescale, liaising with departments as appropriate. The

Corporate Affairs and Membership Manager will deputize when the Company Secretary is unavailable.

### **3.3. Executive Assistant to Chairman and Chief Executive**

The Executive Assistant to Chairman and Chief Executive has day to day responsibility for processing requests for information under FOIA and EIR.

### **3.4. All HDFT employees**

During the course of preparing a response, the FOI Officer will be required to liaise with colleagues across the Trust to obtain specific information for requests. The FOI officer will provide a full brief to relevant colleagues in terms of the information required and advice and assistance with regard to how the response process will be handled.

It is the responsibility of all Trust staff approached by the FOI Officer to respond in a timely manner with reference to the 20 working day legal limit and full consideration to the nature and content of the request. The importance of responding to FOI's promptly will be clearly communicated

## **4. CONSULTATION PROCESS**

In compiling this policy, consultation was undertaken with key colleagues across the Trust who have knowledge or expertise in the area of the FOI Act or information governance measures, as outlined in appendix 12.1.

## **5. REFERENCE DOCUMENTS**

In compiling this policy full reference has been obtained from the ICO office via the online facility at [www.ico.gov.uk](http://www.ico.gov.uk) including reference to the Act itself via [www.opsi.gov.uk](http://www.opsi.gov.uk)

In addition, reference has also been made to the HDFT document library operation policy which outlines how documents placed on the document library should be classified for release under FOI.

## **6. EQUALITY AND DIVERSITY**

This policy adheres to the Equality and Diversity Strategy by reflecting its beliefs and aims in order to ensure that the policy is implemented in a non discriminatory and appropriate way.

## **7. RATIFICATION PROCESS**

The policy will be ratified by the Trust's Information Governance Steering Group.

## **8. IMPLEMENTATION PROCESS**

### **8.1. Training**

Training with regard to the scope and awareness of the Act will be undertaken by the FOI Officer and other staff working on Freedom of Information issues.

Training and awareness of the Act for all HDFT employees is undertaken at the point of induction for newly appointed Trust employees.

The FOI Officer will then be responsible for briefing other colleagues involved in formulating and supply of information for requests as to the nature and requirements of the request in order for the applicant to be provided with the information they require.

## **8.2. Publication and Distribution**

The policy will be available on the Trust's document management system and a copy will be held by the Trust's FOI Officer.

## **8.3. Communication**

The topic of the FOI Act will be outlined as part of the Trust's induction process and included in the Trust's Induction Handbook In addition, an information leaflet was provided to all existing staff when the Act came into force to ensure they were aware of the scope of the Act and how the Trust handles requests for information.

Information on handling FOI requests will be circulated to staff annually via Team Brief, Trust News and the Daily Notices email Bulletin.

## **8.4. Access**

Copies of this document will be available via the intranet. Requests for this policy in an alternative language or format (such as Braille, audiotape, large print etc) will be considered and obtained whenever possible.

## **8.5. Storage Media**

The current policy will be available on the Trust intranet for read only access. Subsequent versions of the policy will be stored on the document library and previous versions will be archived.

## **9. MONITORING, AUDIT AND FEEDBACK PROCESS**

The monitoring, audit and feedback process is summarised in Appendix 2.

## **10. REVIEW PROCESS**

This policy will be reviewed every three years, or at such a time that the FOI Act itself is revised or updated.

## **11. GLOSSARY OF TERMS**

FOI Act – Freedom of Information Act, the legislation relevant to this policy

ICO – Information Commissioner's Officer, the body Responsible for adherence by public bodies to the Act.

## 12. APPENDICES

### 12.1. Consultation Summary

<p><b>Those listed opposite have been consulted and comments/actions incorporated as required.</b> The author must ensure that relevant individuals/groups have been involved in consultation as required prior to this document being submitted for approval.</p>	<p><b>List Groups and or Individuals Consulted</b></p>
	FOI Officer
	Executive Assistant to Chairman and Chief Executive
	Data and Information Governance Steering Group
	Corporate Affairs and Membership Manager

### 12.2. Monitoring, Audit and Feedback Summary

Audit/ Monitoring Criteria e.g.	Audit / Monitoring questions	Audit / Monitoring performed by	Audit / Monitoring frequency	Audit / Monitoring reports distributed to	Action plans approved and monitored by
Systems in place to receive and respond to FOI requests	Are policies kept up to Date and systems adhered to?	FOI Officer	Annually	Director Team, Information Services.	Data and Information Governance Steering Group
Systems in place to receive and respond to FOI requests	Are FOI responses provided within the statutory deadline of 20 working days?	FOI Officer	Bi-Annually	Director Team, Information Services.	Data and Information Governance Steering Group

## 12.3. Appendix 3 - FOI process flow chart



#### **12.4. Appendix 4: Freedom of Information and Environmental Information Regulations Review Process**

1. This procedure will deal with complaints arising from HDFT's obligations under the FOI and EIR in respect of maintenance of the publication scheme, and handling of requests for information.
2. The Trust's publication scheme will notify individuals about who they should complain to about the maintenance of the scheme and inform individuals of their right to complain to the Information Commissioner's Office.
3. When communicating any decision made in relation to a request, the Trust will notify the applicant of their right of complaint. They should be informed of the Trust's review process for dealing with issues relating the publication scheme or handling of requests. They should also be informed of the right to complain to the Information Commissioner.
4. Any written communication (including one transmitted by electronic means) expressing dissatisfaction with a HDFT response to a valid request for information, or operation of the publication scheme will be classed as a complaint.
5. Complaints should be handled initially by the FOI Officer.
6. FOI/EIR complaints should be addressed to:  
  
FOI Officer  
Harrogate and District NHS Foundation Trust  
Trust Headquarters  
3<sup>rd</sup> Floor Strayside Wing  
Harrogate and District NHS Foundation Trust  
Lancaster Park Road  
Harrogate  
HG2 7SX
7. The FOI Officer will acknowledge receipt and completion of the complaint.
8. The FOI Officer will identify and appropriate person to manage the review.
9. The applicant will be informed:
  - That review process is taking place.
  - The intended date that the review process will be completed and a response sent.
10. The review process should be completed within 20 working days of the letter of complaint. Where the intended date of the review cannot be met, the applicant must be informed as to the delay and be given a new date for completion.

11. The review will be carried out by senior staff members who have had no previous involvement in the original request. They will base their decision on receipt of relevant information and guidance relating to the case. They will liaise with the person who made the original decision who must provide their reasoning for coming to their decision.
12. Where the exemption to be applied is a qualified exemption the person(s) carrying out the review must carry out a public interest test and document their reasons for either non-disclosure or disclosure of the requested information.
13. If the refusal notice is on the grounds of cost (exceeds £450.00 or 18 working hours) documentary evidence must be produce as to how the request exceeds the limit.
14. Where the outcome of the complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant be informed as to how soon this will be.
15. Where the outcome of a complaint is that procedures within HDFT have not been properly followed by staff the Trust will apologise to the applicant and take appropriate steps to prevent similar errors in future.
16. The letter outlining the outcome of the review will be signed by the senior member of staff who has undertaken the review.
17. Where the outcome of a complaint is that the initial decision was correct or is otherwise in HDFT's favour, the applicant should be informed of the decision and also of their right to apply to the Information Commissioner (contact details below):

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF