



Freedom of Information Policy

April 2017

Freedom of Information Policy April 2017		Page:	1 Of 1
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Recommended by	Julie Treharne, Head of Communications
Approved by	Executive Management Team
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Responsible Director/Senior Manager	Director Strategy and Planning
For Use By	All Trust employees

This policy is available in alternative formats on request. Please contact the Communications Team on 01204 498400.

Change record form

Version	Date of change	Date of release	Changed by	Reason for change
3.0	20/02/17		J. Treharne	Amended and updated to reflect changes in Communications Team structure and management of FOI process. Also the removal of the Associate Director Corporate Communications and replaced with Director Strategy Planning.

Contents

Section

Page

Freedom of Information Policy April 2017		Page:	2 Of 2
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

1	Freedom of Information Act 2000	4
2	Key Features of the FOI Act	4
3	General Rights of Access and Requests for Information	5
4	Roles and responsibilities	6
5	Duty to Assist	7
6	Publication Scheme	7
7	Information Management	9
8	Management of Requests	9
9	Refusing a Request	11
10	Exemptions	12
11	Third Party Information	12
12	Fees and Charges	12
13	Appeals Process	13
14	Complaints	13
15	Policy Implementation and Communication	13
16	Monitoring	14
17	References	14
Appendix 1	FOI Process	15
Appendix 2	Exemptions	16
Appendix 3	Prejudice Test and Public Interest Test	18
Appendix 4	Equality Impact Assessment	20

1. Freedom of Information Act 2000

Freedom of Information Policy April 2017		Page:	3 Of 3
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

The Freedom of Information Act 2000 (FOIA) gives anyone, regardless of age, nationality or location the right to request information from public authorities including central government, local authorities, schools, police and the NHS.

The Act was passed in November 2000, and replaced the Open Government Code of Practice and the NHS Code of Openness, in place since 1994.

The Act is intended to promote a culture of greater openness and accountability among public sector bodies and facilitate better public understanding of how authorities carry out their duties, why they make the decisions they do and how they spend public money. The Data Protection Act 1998 applies to individuals who want to obtain information relating to themselves. If the information the individual is looking for does not relate to them, then the FOIA 2000 applies.

The Trust supports the culture of openness that the Act brings. The Trust also believes that individuals have a right to privacy and confidentiality, and this policy does not overturn the duty of confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information will be dealt with under the provisions of the Data Protection Act 1998. The organisation must still be able to carry out its duties effectively and to ensure this; the exemptions outlined in the Freedom of Information Act will be applied appropriately.

This policy relates to all records of information held by the organisation and applies to all staff in the Trust and the Non-Executive Directors. Managers must ensure that all staff are made aware of this document.

2. Key features of the FOI Act

The key features of the FOI Act are that it:

- Grants members of the public or organisations (public or private) statutory rights of access to any recorded information held by Public Authorities. This extends also to information which the Trust holds about other organisations or individuals (in some instances)
- Confers on members of the public a legal right to inspect these records
- Puts Public Authorities under a legal obligation to comply with requests for the information it holds unless an exemption from disclosure applies
- Legally obliges Public Authorities to adopt, implement and maintain a Publication Scheme
- Expects Public Authorities to follow the guidance provided in the Codes of Practice issued under Part III of this Act. Namely:

Freedom of Information Policy April 2017		Page:	4 Of 4
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

1. Section 45 Code of Practice on Discharge of Public Authorities' Functions defined under Part I of the Freedom of Information Act 2000
2. Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000.

The FOI Act is chiefly governed by the 'Right to Know' i.e. to know how Public Authorities manage their organisation's affairs.

3. General Rights of Access and Requests for Information

The Act gives people a general right of access to recorded information held by public organisations (subject to certain exemptions). This means that any person who makes a request has the right to:

- Be informed in writing whether the organisation holds the information requested. This is the duty to confirm or deny, and
- If the organisation holds that information, have it communicated to them.

There is no need for the applicant to say they are making a Freedom of Information request. Essentially, this Act covers all requests for information. This is a key reason why all staff need to be aware of this policy.

The Act is fully retrospective.

Basic requirements only are required when requests are made for information:

- Name
- Address (postal or email)
- Description of information requested

Requests must be in writing but this includes requests by email or fax.

The Act requires that requests are responded to promptly and within 20 working days. If the organisation decides to make use of an exemption to withhold the information, the applicant must be informed within 20 working days.

Whilst the organisation cannot ask the applicant the reason or purpose for their request, it can contact the applicant to obtain more detail about the information requested and narrow down what might otherwise be a vague or broad request.

4. Roles and Responsibilities

Freedom of Information Policy April 2017		Page:	5 Of 5
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

The roles and responsibilities are as follows:

Executive Level

Chief Executive

The Chief Executive has overall responsibility to ensure the Trust is responsive and acts upon the requirements of the Freedom of Information Act 2000. The Chief Executive will receive all appeals under the Act and review them.

Board of Directors

The Board of Directors has responsibility to provide a final review of all appeals where necessary.

Senior Management Level

The Director Strategy and Planning is responsible for the development and implementation of FOIA policy and procedure and ensuring requests for information under the Act are acted upon.

This role is delegated to the Head of Communications for implementation and management.

Non-Executive Directors

Non-Executive Directors have a responsibility to make themselves available to be part of any appeals panel convened under this policy and to maintain a working knowledge of the FOI Act to ensure they can carry out this duty effectively.

Head of Communications

The Head of Communications has a responsibility to deliver the Trust's FOI function, ensuring adequate team resources to deliver a professional, effective and timely service in line with demand. This role is responsible for the strategic review of the FOI Policy, performance reporting to Information Governance and Board and analysis of request themes. The Head of Communications receives and approves every response, checking for appropriate level of service area involvement, accuracy, consistency and overall compliance with the FOI Act.

This role will keep abreast of new legislation and will support the Communications Manager and Communications Officers with regard to vexatious request and exempt information as required. The Head of Communications will liaise with requestors in relation to reviews undertaken by the Chief Executive.

Freedom of Information Policy April 2017		Page:	6 Of 6
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

All Directors and Senior Managers

All Directors and senior managers have a duty to ensure that requests for information and advice under the Act which relate to their area are responded to in line with the FOIA policy and procedure within the agreed timescales.

Information Governance Management Group

The Information Governance Management Group, a sub-committee of the Quality Committee is responsible for monitoring compliance with this Policy.

Communications Team

The Trust's Communications Team are responsible for the day to day management of FOI requests, receiving, logging and responding to FOI requests and providing appropriate advice and guidance to managers and directors on the release of information.

A procedure for the management of requests is outlined in Appendix 1.

Communications Manager

The Communications Manager (External) oversees the Communications Team's work and is responsible for ensuring the procedures are followed with regard to process, timeliness, administration and record keeping. The Communications Manager liaises with the Communications Officer in relation to the determination of vexatious requests or exempt information

All Managers

All managers are responsible for ensuring that this policy is communicated and implemented within their area of responsibility. Any advice or assistance regarding this policy or the Freedom of Information Act can be obtained from the Director Strategy Planning or Head of Communications.

All managers have a duty to ensure information and records are managed to ensure requests can be dealt with effectively and appropriately. The management of records is dealt with within the Records Management Lifecycle Policy which should be referred to for guidance in the management of information.

All Staff

All staff have a responsibility to ensure any requests for information under the FOI Act are referred on immediately to their line manager or the Head of Communications for action.

Freedom of Information Policy April 2017		Page:	7 Of 7
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

5. Duty to assist

NWAS has a duty as a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so. This means helping to frame requests, narrow down information and to help the person requesting the information to receive what they are looking for.

6. Publication Scheme

All NHS bodies have a duty to adopt and maintain a Publication Scheme. The Scheme details what information is available for publication, how this can be accessed and if a fee for its release is applicable. Most information within the Trust's publication scheme is available via the Trust website.

NWAS uses the NHS model Publication Scheme approved by the Information Commissioner for use from 1 January 2009.

The Director Strategy Planning is responsible for maintaining the Scheme. This responsibility is delegated to the Head of Communications. The Scheme is monitored, updated and reviewed at regular intervals.

The documents available through the Scheme will be the final, approved versions only. This includes any minutes of meetings. Other information will be updated as required or as stated in the scheme. The Scheme as a whole is reviewed annually by the Head of Communications.

6.1 Classes of Information within the Publication Scheme

No classes of information can be removed without the approval of the Information Commissioner. If anyone feels a class should be added or removed they should make their case to the Chief Executive, who will consider the request.

The current classes of information are:

Who we are and what we do

- Organisational information, locations and contacts, constitutional and legal governance.

What we spend and how we spend it

Freedom of Information Policy April 2017		Page:	8 Of 8
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

- Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.

What our priorities are and how we are doing

- Strategy and performance information, plans, assessments, inspections and reviews.

How we make decisions

- Policy proposals and decisions, decision making processes, internal criteria and procedures, consultations.

Our policies and procedures

- Current written protocols for delivering our functions and responsibilities.

Lists and Registers

- Information held in registers required by law and other lists and registers relating to the functions of the authority.

The Services we Offer.

- Advice and guidance, booklets and leaflets, transactions and media releases, a description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure
- Information in draft form
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.

7. Information Management

It is the responsibility of the Executive Management Team and senior management to ensure that information is maintained in all their relevant areas to ensure the Publication Scheme can be kept up to date. This is especially important with documents such as policies and procedures. It will be assumed that the appropriate managers are satisfied with current documents within the scheme, unless they state otherwise.

Freedom of Information Policy April 2017		Page:	9 Of 9
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

It is also the responsibility of the relevant directors to ensure that records management in their department will be compliant with the Trust's Records Management Strategy.

8. Management of Requests

The Trust has existing processes for providing information to members of the public (and external organisations), and these are outside the remit of this policy. Requests for information generated as part of a department's existing processes should be treated as non-FOI requests and should be managed through local business as usual procedures. The overriding principle should, wherever possible, be 'business as normal'.

Under the FOI Act, there is no requirement for the applicant to label or designate a request as an FOI request. Timescales around existing processes, therefore, should be reviewed to ensure compliance with the 20 working day requirement under the FOI Act to provide requested information.

All requests for information outside of normal business processes, or those specifically defined as FOI requests, should be referred to the Communications Team.

Under the Act, the Trust is not obliged to deal with vexatious requests. These are determined by the information requested and not by the individual. The question at hand is whether the request is a genuine endeavour to access information or whether it is aimed at disruption of the service or harassment of a specific member of staff.

The Trust is under no obligation to comply with a repeated request from the same person, unless a reasonable period has elapsed. In this situation, the Head of Communications will make a decision in respect of a response, taking into account the overall cost of the repeated request(s) and the lapse in time between each of them.

On receipt of an application for information under the FOIA, the Communications Officer assigned to the request, will email the applicant confirming receipt of the request within three working days. This will state that the organisation intends to deal with the request within 20 working days, unless there are exceptional circumstances.

Administration and documentation of requests will be co-ordinated by the Communications Team centrally.

8.2 Clarity of Requests

If the applicant has not provided enough information for the request to be dealt with or is requesting advice and assistance, one of the following steps will be taken, depending on the situation:

Freedom of Information Policy April 2017		Page:	10 Of 10
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

- Give guidance on how to access the information from the organisation under the Publication Scheme and the general rights
- Inform the applicant of the progress of their request
- Explain the basis for any charges or fees levied or exemptions applied
- Direct applicants to the appeals process, complaints procedure or the Office of the Information Commissioner if they are dissatisfied with any outcome

Requests can be delayed until sufficient information has been received from the applicant to process the request, and the 20 working days will commence at the stage when the sufficient information has been provided.

8.3 Accessing Information

The Communications Officer handling the request will identify who holds the information that the applicant has requested, if it is not available in the Publication Scheme. Managers and staff will have ten working days to review the request and provide the information (if appropriate). Any problems in providing the information should be immediately brought to the attention of the Communications Officer. Assuming the applicant is in agreement, the response time limit may be extended in certain circumstances i.e. sickness, etc.

The information will be forwarded to the Communications Officer handling the FOI request who will review the information with the Communications Manager (External) in respect of any exemptions. If an exemption applies to part of the document, the rest of the document would still be eligible for release.

8.4 Providing the Information

If no exemptions apply and there are no fees or charges to be levied, the Communications Officer will finalise the response, seek the approval of the Head of Communications and Head of Service (information owner) and provide the information requested by the applicant, within the 20 working day standard of the original request.

9. Refusing a Request

A request for information may be refused if:

- The information is exempt under Part II of the Act (see Appendix 2)
- The Trust has requested further detail from the applicant to progress the request and no further information has been supplied. The organisation will make reasonable efforts to contact the applicant for the additional information

Freedom of Information Policy April 2017		Page:	11 Of 11
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

- A fees notice has been served to the applicant and has not been paid within three months (beginning on the day the fees notice is issued)
- If complying with the request would exceed the appropriate cost limit established in the National Fees Regulations. (see section 12). The organisation will work with applicants to keep compliance costs to a minimum, but maintains the right to refuse such a request
- If the request is vexatious - if the organisation has recently complied with a request for information then it is not required to comply with a subsequent identical or highly similar request unless a reasonable time interval has elapsed. A log of all requests will be kept for monitoring purposes and this can be used to identify vexatious requests.

10. Exemptions

The Trust's principle will be to release/disclose information on request, however exemptions will be applied where warranted and justified. The application of exemptions can be subject to the outcome of the Prejudice Test and/or the Public Interest Test (the tests are outlined in Appendix 3).

Each decision surrounding the use of the Prejudice test, the Public Interest Test, an exemption and details of non-compliance (within the 20 working day deadline) will be documented centrally.

Specialised advice will be sought as appropriate, where required.

10.1 Management of Requests for Exempted Information

Following a review of an information request by the Communications Manager (External) and a decision being taken that the information request is exempt from release under the FOI Act, 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(s) that has been applied
- The justification for the use of the exemption(s)
- Details of the appeals process if they are not satisfied with the outcome.

If the exemption is absolute, then the organisation is exempt from the duty to confirm or deny (that is the duty to tell the applicant whether or not the Trust 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 in question

Freedom of Information Policy April 2017		Page:	12 Of 12
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

- State why the exemption applies.

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 is exempt, especially in cases where the public interest has to be considered. As a result the Trust will inform the applicant of any delay and give a reasonable estimate of the date by which a decision is expected.

11. Third Party Information

The Trust will hold information that relates to other organisations. This could relate to both public and private organisations. Commercially sensitive third party information should remain confidential and the Trust will make every effort to protect this information and adhere to confidentiality.

The Trust will, prior to disclosure of any information, seek consultation with the organisation(s) to whom the request relates. However, should the outcome of the Public Interest Test favour disclosure, the Trust will have no option other than to comply and disclose the requested information.

12. Fees and Charges

In accordance with the Ministry of Justice Affairs guidelines:

- Requests for information to the value of £450.00 (based on the two and a half days of staff time) will be provided free of charge
- A fee will be levied for requests costing over and above £450.00 (i.e. the fee levied will be the total cost minus £450.00)
- Where disbursements are over and above the cost of a first class stamp, (As a guideline, between 8-10 sheets of paper) consideration will be given to making relevant charges.

13. Appeals Process

If a person is dissatisfied with the outcome of a request for information they have the right to ask for an internal review. In the first instance, this should be addressed to the Chief Executive. The internal review must be carried out within 20 working days from the date of the request of the review. In a small number of cases, it may be reasonable to take longer. In these circumstances, the Head of Communications will notify the requestor, explain why more time is needed and give an estimate of the completion date. However, the total time taken for review should not exceed 40 working days.

Freedom of Information Policy April 2017		Page:	13 Of 13
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

Should the person making the request remain dissatisfied with the outcome of the review by the Chief Executive, then a final appeal should be addressed to the Board of Directors and a panel of Non-Executive Directors will be established to review the case.

If all of the above actions fail, the final recourse for an appeal is to the Office of the Information Commissioner.

14. Complaints

Initial complaints about the handling of a request for information under the Act will go to the Chief Executive and will follow the Trust's complaints procedure. When the applicant is informed of the outcome of this process, they must be given the details of the Office of the Information Commissioner and informed of their right to take their complaint to that Office.

15. Policy Implementation and Communication

Following approval, the policy and supporting procedure will be published under the Freedom of Information section of the Trust's website and the intranet.

The policy and supporting procedure will also be shared with Senior Management Teams to ensure all managers are familiar with the Act and their associated responsibilities.

Good practice guidance will be produced for all managers to assist in the management of the policy which will provide examples of FOI requests and responses.

A general guidance brief for all staff will again be made available for dissemination to staff via their line managers and summarised in the staff bulletin.

16. Monitoring

Compliance with this policy will be reported to the Information Governance Management Sub-committee of the Quality Committee.

Summary information regarding Information Requests will be provided for the Executive Management Team and the Information Governance Management sub-committee.

17. References

- Freedom of Information Act 2000
- Data Protection Act 1998

The following organisation policies and procedures are relevant to this policy:

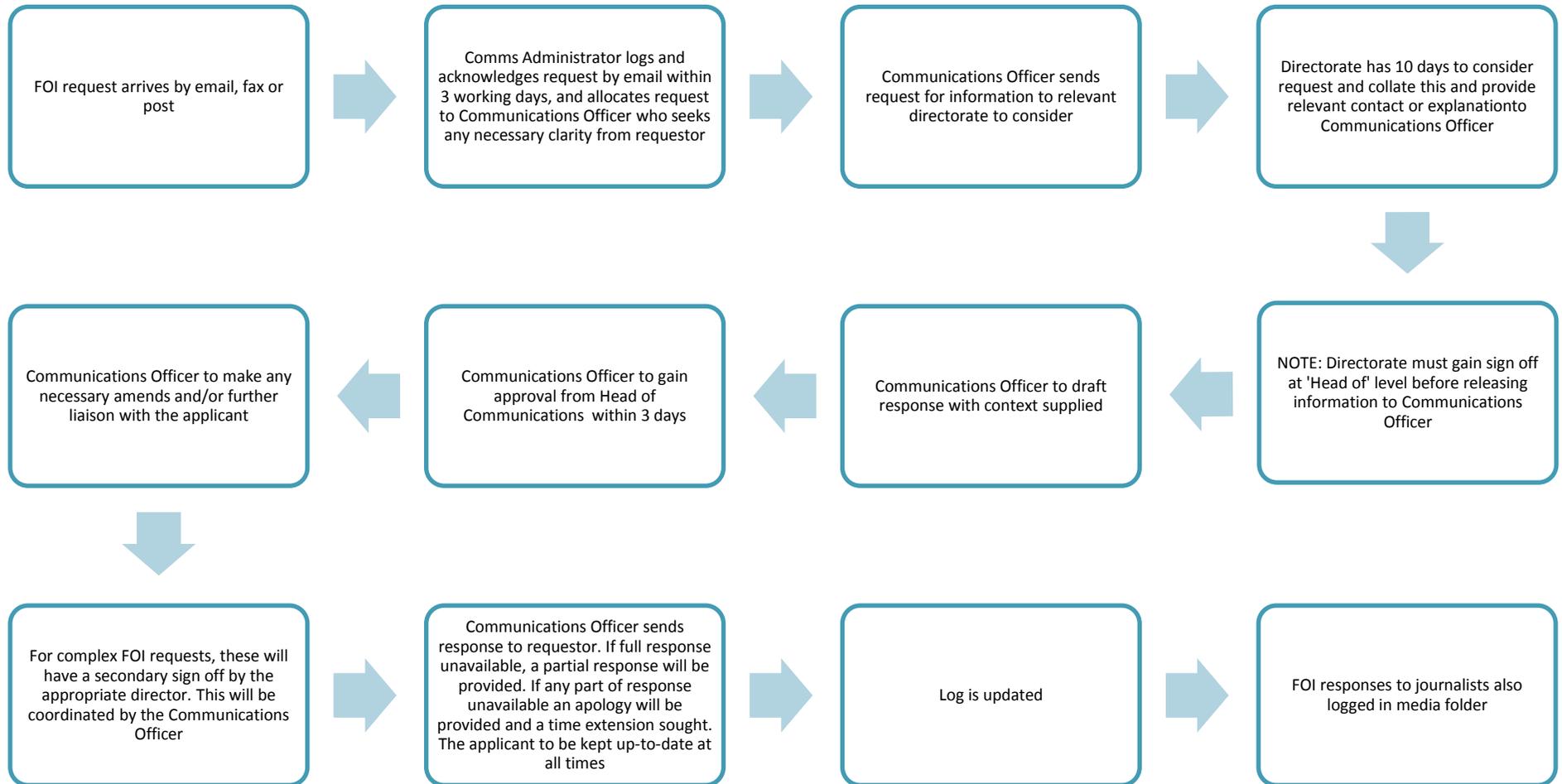
Freedom of Information Policy April 2017		Page:	14 Of 14
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

- Records Management Lifecycle Policy
- Complaints Policy and Procedure (Making Experiences Count)
- Staff Information Confidentiality Policy
- Patient Information Confidentiality Policy
- Communications and Engagement Strategy.

Freedom of Information Policy April 2017		Page:	15 Of 15
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

Appendix 1

Procedure for the management of requests under the FOIA



Freedom of Information Policy April 2017		Page:	16 Of 16
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

Appendix 2

Exemptions available under Part II of the Freedom of Information Act 2000

There are two types of class exemption:

- **Absolute**, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure
- **Non-absolute and qualified** by the public interest test, which require the public body to decide whether it is in the balance of public interest not to disclose information

With the exception of s21 (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 available under the Act are:

Section 21	Information available to the applicant by other means
Section 23	Information supplied by, or relating to, bodies dealing with security matters
Section 32	Court records
Section 34	Parliamentary Privilege
Section 40	Personal information
Section 41	Information provided in confidence
Section 44	Prohibitions on disclosure

Freedom of Information Policy April 2017		Page:	17 Of 17
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

The exemptions that are qualified by the public interest are:

Section 22	Information intended for future publication
Section 24	National security
Section 26	Defence
Section 27	International relations
Section 28	Relations within the United Kingdom
Section 29	The economy
Section 30	Investigations and proceedings conducted by public authorities
Section 31	Law enforcement
Section 33	Audit functions
Section 35	Formulation of government policy
Section 36	Prejudice to effective conduct of public affairs
Section 37	Communications with Her Majesty etc., and honours
Section 38	Health and safety
Section 39	Environmental information
Section 42	Legal professional privilege
Section 43	Commercial interests

Freedom of Information Policy April 2017		Page:	18 Of 18
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

Appendix 3

The Prejudice and Public Interest Tests

With respect to both the Prejudice Test and the Public Interest Test, each case must be considered on its individual merits. It is acknowledged that there is no 'exact science' to this. All decisions will be documented.

The Prejudice Test

The Prejudice Test is one that is applied to certain elements of an exemption. This is to assess whether prejudice may be caused to the 'interests' (defined within the scope of the exemption) through the release and/or disclosure of the requested information.

A number of exemptions are identified under the Act where the Prejudice Test should be considered, namely:

- Relations within the United Kingdom; Section 28
- The Economy, Section 29
- Law Enforcement, Section 31
- Audit Functions; Section 33
- Prejudice to the effective conduct of public affairs; Section 36
- Health and Safety; cited at Section 38
- Commercial Interests, Section 43.

It is the 'interest(s)' represented within the elements of a particular exemption that is/are tested for prejudice. In each case, where disclosure would prejudice any of the elements defined within the scope of the exemption, the Prejudice Test will apply. For example, under Section 31, where the disclosure of information may prejudice the prevention or detection of a crime, the information will be withheld without the need to apply the Public Interest Test.

The elements subject to the Prejudice Test differs for each exemption. Once it is ascertained that there is no risk of prejudice, the Public Interest Test can be applied. In all cases, the Prejudice Test will always precede the application of the Public Interest Test.

It is important to note that the Test of Prejudice does not always apply to every element of an exemption. Therefore, reference should always be made to the FOI legislation to check where this is applicable.

Freedom of Information Policy April 2017		Page:	19 Of 19
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

The Public Interest Test

The Public Interest Test in each case determines whether the interest of the public is better served by the release of the requested information or whether it is better served by the withholding or non-disclosure of that information.

The objective of the Public Interest Test is to make reasoned judgments as to whether the information is disclosed or not for the benefit of the general public. In principle, the following favour disclosure:

- Accountability
- Public participation
- Public awareness
- Justice to an individual
- Research.

Whilst the following favour non-disclosure:

- Exemption provisions
- Interests of third parties
- Efficient and effective conduct of service
- Flow of information to service
- Fair treatment of an individual.

In relation, to the Public Interest Test, the following considerations are not valid reasons for non-disclosure:

- High Office
- Policy development
- Candour and frankness
- Disclosure of confusing or misleading information
- The information or record does not reflect the reason for the decision (e.g. Minutes)
- Draft documents
- Embarrassment.

Freedom of Information Policy April 2017		Page:	20 Of 20
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

Appendix 4: Equality Impact Assessment

Name of Policy, Service or Function

Freedom of Information Policy

Equality Impact Assessment carried out by

Julie Treharne, Head of Communications

Date of Equality Impact Assessment

- 2 May 2008
- Reviewed by Asiya Jelani 7 June 2011
- Further revision March 2015 by Sarah Smith
- Julie Treharne February 2017

Step 1: Description and Aims of Policy, Service or Function

Key elements of policy, service, process

To comply with the FOI Act and ensure the Trust is open and accountable in terms of its public information and provision of information to interested parties.

Who does the policy, service or function affect?

The Policy and the Act are available for anyone to use.

How do you intend to implement the policy or service change (if applicable)

Implementation and communication plans for the Policy are outlined in section 15 of the Policy.

Step 2: Data Gathering

Summary of data available and considered

Information relates to Trust information that is not person identifiable and relates to general access to public information.

No specific evidence that there are barriers to accessing information under the Act however general

Freedom of Information Policy April 2017		Page:	21 Of 21
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

consideration should be to ensuring there are no barriers to accessing and understanding of public information.

Outcomes of data analysis

Equality Group	Evidence of Impact
Gender	No evidence
Race/Ethnicity	No evidence
Disability	No evidence
Sexual Orientation	No evidence
Religion or belief	No evidence
Age	No evidence
General (Human Rights)	No evidence

Step 3: Consultation

Summary of consultation methods

No consultation undertaken. However as part of Trust engagement plans, discussions regarding access to information about the organisation can be discussed.

Outcomes of consultation

Equality Group	Evidence of Impact
Gender	
Race/Ethnicity	
Disability	
Sexual Orientation	
Religion or belief	
Age	
General (Human Rights)	

Freedom of Information Policy April 2017		Page:	22 Of 22
Author:	Head of Communications	Version:	3.0
Date of Approval:	19 April 2017	Status:	Approved
Date of Issue:		Date of review:	April 2019

Equality Impact Assessment Step 4 & 5: Impact Grid

There is a general positive impact in that the Policy requires the trust to be more accountable and open about all its information and governance which is of benefit to all members of the public.

Relevant Equality Area	Areas of impact identified	Is the impact positive or negative?	Key issues for action [Will form basis of action plan]
Gender	None		
Race/Ethnicity	Access in terms of potential communication barriers	Potentially negative	Ensure access to information in different formats and languages is available
Disability	Access in terms of potential communication barriers	Potentially negative	Ensure access to information in different formats and language is available
Sexual Orientation	None		
Religion or belief	None		
Age	None		

Freedom of Information Policy 2017		Page:	23 Of 23
Author:	Head of Communications	Version:	1.0
Date of Approval:		Status:	Draft
Date of Issue:		Date of review:	April 2017

General (Human Rights)	None		
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Step 6: Action Plan

Name of Policy or Service: Freedom of Information Policy					
Issue identified and equalities group or communities affected	Action to be taken	By When	Who By	Expected outcome	Progress
Ensure information about the policy and its content is accessible for all members of the public	Ensure clear information as part of the publication of the website and information leaflets – that information can be provided in alternative formats	on approval of document	J Treharne	Improved communication regarding accessible information	
Ensure we are able to receive, process and respond to written information requests in different formats	To be reviewed on a case by case basis – budget allocation has been made available for translation services	case by case	J Treharne	Responsive process for dealing with all requests	

Freedom of Information Policy 2017		Page:	24 Of 24
Author:	Head of Communications	Version:	1.0
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