



Freedom of Information and Environmental Information Regulations Policy

May 2021

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For Use By	All trust employees

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

Change record form

Version	Date of change	Location of change	Changed by	Reason for change
5.0	12/03/21	Section 8.2, page 11	J. Treharne	To reflect the trust's implementation of Datix Cloud IQ for improved records management.
5.0	12/03/21	Section 9, page 12	J. Treharne	To reflect the trust's implementation of Datix Cloud IQ by the Communications Team.
5.0	06/05/21	Section 4, page 7	J. Treharne	To reflect the trust offering applicants a different route to the obtaining of certain types of information.

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5.0	06/05/21	Section 6, page 8 and Appendix 1, page 18	J. Treharne	To reflect changes to the roles of the Head of Communications and Engagement, Deputy Head of Communications and Engagement and Senior Communications Manager (External)
5.0	06/05/21	Section 8, page 10 and Appendix 6, page 31	J. Treharne	To reflect the role of the Digital Communications Officer
5.0	06/05/21	Throughout the policy	J. Treharne	The Data Protection Act 1998 was repealed by the Data Protection Act 2018
5.0	06/05/21	Appendix 6, page 32	J. Treharne	Inclusion of the trust's support for advocacy in relation to FOI/EIR requests

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1. Introduction

This policy outlines the approach of the North West Ambulance Service NHS Trust's approach to comply with the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIRs). The legislation provides for the disclosure of information and all recorded data except personal information and the qualified exemptions.

The legislation 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 legislation 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 2018 applies to individuals who want to obtain information relating to themselves (a Subject Access Request).

The trust supports the culture of openness that the legislation brings. This will be balanced against the need to ensure the confidentiality of certain information in areas such as personal information and commercially sensitive information. The trust 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 2018 and the EU General Data Protection Regulations 2018 (GDPR). (Section 40 of the FOI Act in relation to personal information and the impact of GDPR is detailed at Appendix 3 of this policy).

The organisation must still be able to carry out its duties effectively and to ensure this; the exemptions outlined in the FOI Act and the exceptions contained in the EIRs 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. Scope

This policy is intended to cover all records created in the course of the business of the trust. This includes email messages and other electronic records. It covers all requests for information except requests from individuals for their own personal data and normal 'business as usual' type requests. The policy outlines good practice and identifies the responsibilities of trust staff in terms of the FOI Act and EIRs.

3. Key features of the FOI Act and EI Regulations

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The key features of the legislation is 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 and that they are chiefly governed by the 'right to know' i.e. to know how public authorities manage their organisation's affairs.

The trust is fully committed to the aims of the legislation and recognises its importance. To assist organisational compliance with the legislation, the trust will endeavour to ensure that:

- The majority of information is made available through the trust's Publication Scheme which is based on, and in-line with, the model produced by the Information Commissioner's Office in 2009.
- Other information is readily available on request.

If the information requested is subject to an exemption or an exception in the case of EIRs (see Appendices 2 and 5 on exemptions and exceptions) and it is not absolute, then the trust will conduct a 'public interest test' to determine whether the information can be released.

4. General Rights of Access and Requests for Information

The legislation 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 or environmental information request. Essentially, the legislation covers all requests for information. This is a key reason why all staff need to be aware of this policy.

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

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

FOI requests must be in writing but this includes requests by email or fax. EIR requests do not have to be in writing.

The legislation requires that requests are responded to promptly and within 20 working days. If the organisation decides to make use of an exemption or exception 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.

In some instances the applicant may be given the option to request the information via a different route eg journalists via the press office and academic researchers via the research team.

5. Requests under the Environmental Information Regulations

'Environmental information' can be summarised as:

- the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites and the interaction between these elements
- factors such as substances, energy, noise, radiation or waste affecting or likely to affect the elements of the environment
- measures such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect or protect the elements of the environment
- reports on the implementation of environmental legislation
- cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities
- the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment
- In dealing with a mixed request where both the FOI Act and the EIRs apply the trust will apply the correct exemption or exception if information has to be withheld.
- The EIRs do not specify that requests must be in writing which means that the trust will also accept telephone requests for environmental information. The EIRs also require requests to be answered within 20 working days although there is a

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provision to extend the response time to 40 working days, but only for complex and voluminous requests.

6. Roles and Responsibilities

Trust roles and responsibilities in relation to FOI and EIR are as follows:

- **Chief Executive**

The Chief Executive has overall responsibility to ensure the trust is responsive and acts upon the requirements of the FOI Act and EIRs. The Chief Executive will receive all requests for review and or appeal and ensure these are responded to within the stated timeframe. Responsibility for the management of review and appeal requests is delegated to the Director of Strategy, Partnerships and Transformation.

- **Board of Directors**

All Directors have a duty to ensure that requests for information and advice under the legislation which relate to their area are responded to in line with this policy and procedure within the agreed timescales. The Board of Directors has responsibility to provide a final review of all appeals where necessary. 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 and EIRs to ensure they can carry out this duty effectively.

- **Director of Strategy, Partnerships and Transformation**

The Director of Strategy, Partnerships and Transformation is specifically responsible for the development and implementation of FOI and EIRs policy and procedure and ensuring requests for information under the legislation are acted upon. This role is also responsible for the update and maintenance of the trust's Publication Scheme. The above two roles are delegated to the Head of Communications and Engagement for implementation and management.

The Director of Strategy Partnerships and Transformation will also approve review responses and ensure appeals are handled in a timely way and in accordance with trust policy.

- **Head and Deputy Head of Communications and Engagement**

The Head of Communications and Engagement has a responsibility to deliver the trust's FOI and EIRs 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 this policy, performance reporting as part of the dashboard report to the Information Governance Management Group and Board and analysis of request themes.

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In times of absence the Deputy Head of Communications and Engagement will undertake the above roles for the team.

The Deputy Head of Communications and Engagement oversees the trust's Publication Scheme and its annual update.

- **Senior Communications Manager (External)**

The Senior Communications Manager (External) oversees the Communications Team's FOI and EIR work on a day to day basis and is responsible for ensuring the procedures are followed with regard to process, timeliness, administration and record keeping.

The Senior Communications Manager (External) receives and approves every response, checking for appropriate level of service area involvement, accuracy, consistency and overall compliance with the FOI Act and EIRs.

The Senior Communications Manager (External) supports the Communications Team in relation to the determination of vexatious requests or exempt information. This role is also responsible for the setting up of an ad-hoc FOI and EIRs review group as and when required and for promoting general FOI and EIRs awareness throughout the trust.

The senior management team will keep abreast of new legislation and will support the Communications Officers in the liaison with requestors in relation to reviews and in the production of responses. Review responses in relation to reviews directed to the Chief Executive's Office and any requests received from the Information Commissioner's Office will be produced by the Senior Communications Manager (External) and shared with the Deputy Head of Communications and Engagement and Head of Communications and Engagement for information and reporting purposes. Final approval will be provided by the Director of Strategy, Partnerships and Transformation

In times of absence the Deputy Head of Communications and Engagement will produce review responses.

- **Communications Team**

The trust's Communications Team is responsible for the day to day management of FOI and EIRs requests, receiving, logging and responding to requests and providing appropriate advice and guidance to managers and directors on the release of information. The Team's Communications Assistant will allocate information requests to the Communications Officers as they are received and also provide statistical information to support performance and themed analysis reports. A procedure for the management of requests is outlined in Appendix 1.

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- **Information Management Group**

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

- **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, the FOI Act or the EIRs can be obtained from the Director of Strategy Partnerships and Transformation or Head of Communications and Engagement.

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 Code of Practice 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 and EIRs are referred on immediately to their line manager or the Head of Communications and Engagement for action.

7. 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.

8. 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. The trust's publication scheme is available via the trust's website (www.nwas.nhs.uk).

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

The Director of Strategy Partnerships and Transformation is responsible for the delivery of the Scheme on behalf of the trust. This responsibility is delegated to the Head of Communications and Engagement. The Scheme is monitored, updated and reviewed at regular intervals by the trust's Digital Communications Officer and overseen by the Senior Communications Manager (Internal).

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

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or as stated in the scheme. The Scheme as a whole is reviewed annually by the Head of Communications and Engagement.

8.1 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

- 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 FOI Act or EIRs, or is otherwise properly considered to be protected from disclosure
- Information in draft form

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- 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.

8.2 Information Management

It is the responsibility of the Executive Leadership 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.

It is also the responsibility of the relevant directors to ensure that records management in their department is compliant with the trust's approach to records management. The trust is currently implementing the Datix Cloud IQ system throughout the organisation which will improve consistency, retrieval of records, production of analytical data to evaluate performance and increase the safety of information assets. Datix Cloud IQ will also be used in relation to Freedom of Information and Environmental regulation requests.

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

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

Under the legislation, 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.

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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 and Engagement 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 legislation, 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. As mentioned at 8. 2 above this will shortly be undertaken through use of the Datix Cloud IQ system.

10. 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:

- 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/exceptions 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.

11. 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.

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

12. Providing the Information

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

13. Refusing a Request

A request for information may be refused if:

- The information is exempt under Part II of the FOI Act (see Appendix 2).
- The information is subject to an exception under the EIRs (see Appendix 5).
- 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.
- 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).
- Complying with the request would exceed the appropriate cost limit established in the National Fees Regulations. The trust will work with requestor to keep compliance costs to a minimum, but maintains the right to refuse such a request.
- The request is vexatious - if the trust 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.

14. Exemptions and Exceptions

The trust's principle will be to release/disclose information on request, however exemptions and exceptions will be applied where warranted and justified. The application of both exemptions and exceptions can be subject to the outcome of the Prejudice Test and/or the Public Interest Test (the tests are outlined in Appendix 4).

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.

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15. Management of Requests for Exempted or Excepted Information

Following a review of an information request by the Senior Communications Manager (External) and a decision being taken that the information request is exempt or excepted from release 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)/exception 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
- 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.

16. 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 as defined by the Act 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.

17. Fees and Charges

In accordance with the Ministry of Justice Affairs guidelines:

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- 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.

18. 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 Senior Communications Manager (External) 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.

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.

19. Complaints

Initial complaints about the handling of a request for information under the legislation 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.

20. Policy Implementation and Communication

Following approval, the policy and supporting procedure will be published under the FOI/EIR section of the trust's website and the intranet.

Identified themes and learning from FOI's and EIRs will be included in the Communications and Engagement dashboard updates to Board. Shared learning will

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also be reported to the Non clinical Learning Forum. Responses provided to media channels will be included in the trust's daily media briefs.

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

Good practice guidance is available for all managers to assist in the management of the policy via the trust's intranet.

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

21. Monitoring

Compliance with this policy will be reported to the Information Management Group of the Resources Committee.

Summary information regarding information requests will be provided for the Executive Leadership Team.

22. References

The following legislation is relevant to this policy:

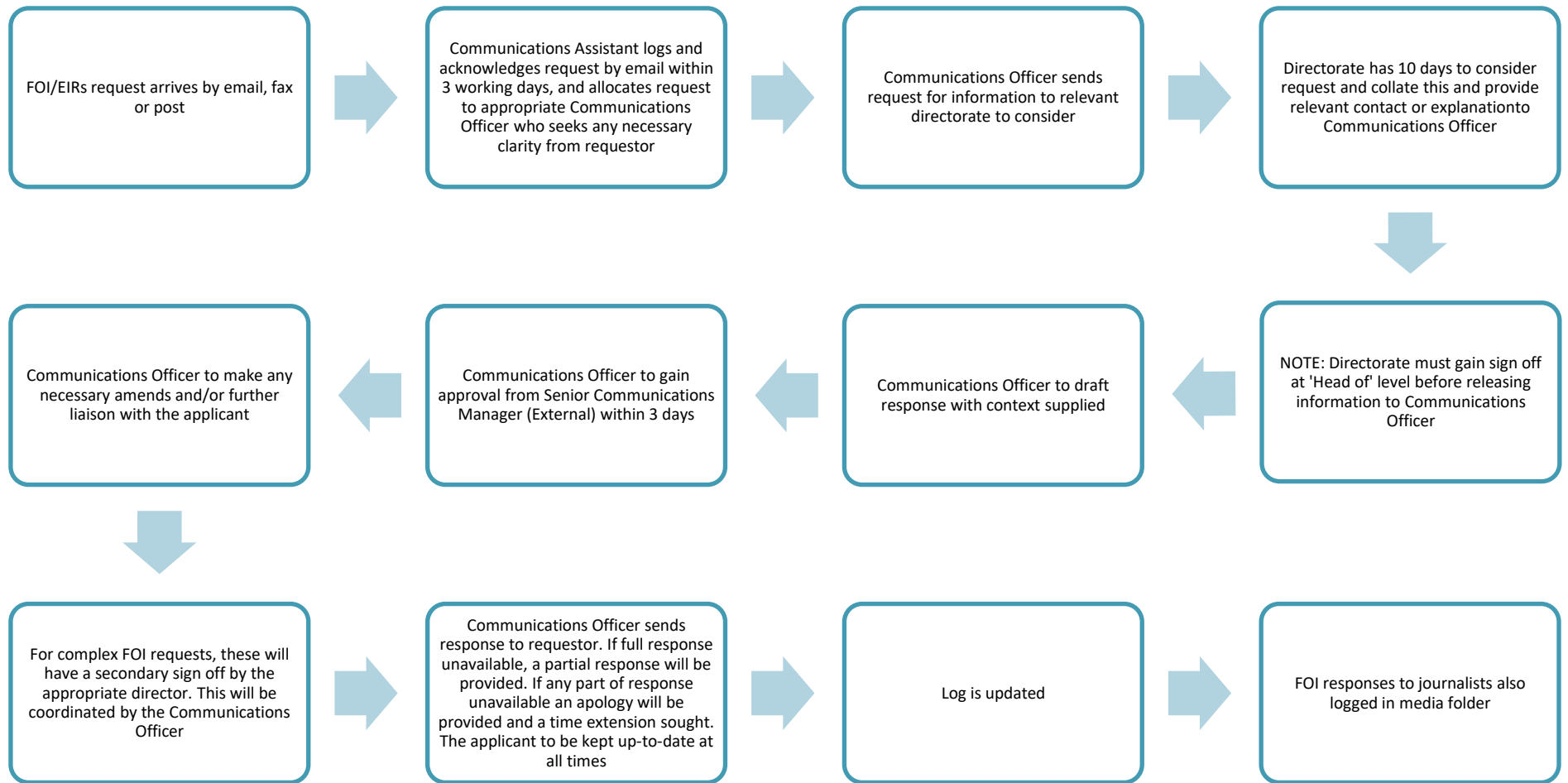
- Freedom of Information Act 2000
- General Data Protection Regulation - Data Protection Act 2018
- Environmental Information Regulations 2004
- EU General Data Protection Regulations 2018

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

- Complaints Policy and Procedure
- Confidentiality Policy
- Communications and Engagement Strategy.

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Appendix 1 – Procedure for the management of FOI/EIR requests



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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 36	Disclosures prejudicing the effective conduct of public affairs
Section 40	Personal information
Section 41	Information provided in confidence
Section 44	Prohibitions on disclosure

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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 (1)	Investigations and proceedings conducted by public authorities
Section 30 (2)	Information relating to the obtaining of information from confidential sources
Section 34	Parliamentary privilege
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(1)(a) and (b)	Health and safety: where disclosure would be likely to endanger the physical or mental health of any individual and/or: where disclosure would be likely to endanger the safety of any individual.
Section 39	Environmental information
Section 40	Personal Information
Section 42	Legal professional privilege
Section 43	Commercial interests – trade secrets

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Appendix 3

General Data Protection Regulation Impact

The main area of affect is in relation to Section 40 – Personal Information.

Section 40(2) relating to third party requests states that any information where a request for information relates to a third party, is also exempt information if:

It constitutes personal data which does not fall within S40(1), and the first, second or third condition below is satisfied.

- S40(3A)The first condition is that the disclosure
 - Would contravene any of the data protection principles,
- S40(3B)The second condition is that the disclosure
 - Would contravene Article 21 of the GDPR (general processing: right to object to processing).
- S40(4A)The third condition is that—
 - On a SAR under Article 15(1) of the GDPR (right of access by the data subject) for access to personal data, the information would be withheld due to an exemption.

In addition, under the Lawfulness of Processing Article 6(1) GDPR

Processing shall be lawful only if and to the extent that at least one of the following applies:

- a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

This is the clause that will most often determine if the data can be shared,

However,

- a) processing is carried out in the public interest, should also be considered
- b) This condition is not permitted as a condition to release 3rd party data.

The following should also be considered when considering processing fairly:

- The possible consequences of disclosure on the individual;
- The reasonable expectations of the individual, taking into account expectations both at the time the information was collected and at the time of the request;

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- The nature of the information itself;
- The circumstances in which the information was obtained;
- Whether the information has been or remains in the public domain;
- The 'freedom of information' principles of transparency and accountability; and
- Any legitimate interests in the public having access to the information relevant to the specific case.

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Appendix 4

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.

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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.

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Appendix 5

EIR exceptions subject to the public interest test

- reg. 12 (4) (a) Does not hold that information when an applicant's request is received
- reg. 12 (4) (b) Is manifestly unreasonable
- reg. 12 (4) (c) Is formulated in too general a manner (provided assistance has been given to the applicant with a view to re-framing the request)
- reg. 12 (4) (d) Relates to unfinished documents or incomplete data
- reg. 12 (4) (e) Would involve disclosure of internal communications

And if disclosure would adversely affect:

- reg.12 (5) (a) International relations, defence, national security or public safety
- reg.12 (5) (b) The course of justice, fair trial, conduct of a criminal or disciplinary inquiry
- reg.12 (5) (c) Intellectual property rights
- reg.12 (5) (d) Confidentiality of public authority proceedings when covered by law
- reg.12 (5) (e) Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest
- reg.12 (5) (f) Interests of the person who provided the information
- reg.12 (5) (g) Protection of the environment

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Appendix 6: Equality Impact Assessment

Name of Policy, Service or Function

Freedom of Information and Environmental Information Regulations Policy

Equality Impact Assessment responsibility:

Julie Treharne, Head of Communications and Engagement

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
- Yunus Mogra May 2019
- Yunus Mogra March 2021

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

Key elements of policy, service, process

To comply with the FOI Act and EIR 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

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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 or Regulations. However general consideration should always be given to ensure 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 trust can be discussed.

Outcomes of consultation

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

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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		

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General (Human Rights)	None		
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Step 6: Action Plan

Name of Policy or Service: Freedom of Information and EIR 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 and accessible information as part of publication on the trust's website and if requested provide the information in alternative formats	Ongoing	Digital Communication s Officer as part of the Communication s and Engagement Team	Improved communication regarding accessible information	
Ensure we are able to receive, process and respond to written	To be reviewed on a case by case basis – budget allocation is available for translation services	Case by case basis	Communication s Officer receiving the	Responsive process for dealing with all	

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information requests in different formats			request as part of the Communications and Engagement Team	requests in the most appropriate format.	
Advocacy support in relation to FOI and/or EIR requests may be required for vulnerable community groups or members of the public.	Consideration should be provided where advocacy support from friends, family or carers is communicated e.g. learning disabilities, mental health or those who require support with English to request information. Any professional advocacy costs to be incurred by the requestor.	Case by case basis	Communications Officer receiving the request as part of the Communications and Engagement Team	Responsive process for dealing with all requests for advocacy support in relation to FOI/EIR requests.	

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