

Standard Operating Procedure

FREEDOM OF INFORMATION (FOI) REQUESTS

SETTING	Trust wide
FOR STAFF	All staff with responsibilities for responding or contributing to requests for information under the Freedom of Information Act (FOIA)
ISSUE	Compliance with the Freedom of Information Act 2000.

Standard Operating Procedure (SOP)

Introduction

The Freedom of Information Act (FOIA) came into force in 2005. It is a legal requirement that the Trust, along with all other public authorities, must comply with.

The Act applies to all information (excluding personal records) held by, or on behalf of, the Trust. This includes both current and archived information. The Data Protection Act 1998 ('the DPA') still applies to Subject Access Requests for access to health records, and other person-identifiable information.

The Act gives anyone the right to make a request for information held by the Trust, subject to certain conditions and exemptions.

The Act is enforced and overseen by the Information Commissioners Office (ICO).

The Trust's Corporate Governance Team administrates the Trust's responses to requests made under the Act.

The Trust must respond to Freedom of Information requests within 20 working days of receiving them. Failure to do this could result in the Trust being liable for penalties. Advice and assistance must be provided to everyone who makes a request, with no question as to why they want the information.

This doesn't mean you have to treat every enquiry formally as a request under the Act. It will often be most sensible and provide a better experience to deal with it as a normal enquiry under your usual procedures: for example, if a member of the public wants to know what date the annual report will be published, or whether a department has wheelchair access.

The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away;
- **or** the requester makes it clear they expect a response under the Act.

Requests are 'applicant blind', meaning that the Trust cannot take the identity of the applicant into consideration when releasing the information. An exception to this may be made if the request proves vexatious.

Receiving requests

Any Trust employee may be contacted by an individual wishing to make an FOI request so all staff should be aware of the correct advice to give.

Requests should be made in writing. If an applicant attempts to make a request over the telephone, they should be informed how to make their request in writing. If they require assistance this should be made readily available.

Requests should be sent to: FreedomOfInfo@uhbristol.nhs.uk

Or:

Freedom of Information, Trust Headquarters, Marlborough Street, BS1 3NU

Processing the request

Upon receipt of a request for information, the FOI Administrator will log the request on Datix and assign it a unique sequential reference number in the format YY-REF. The FOI Administrator will then identify the division and contact within the organisation (contributor), to send the request to, advising them of the internal timescale for response, which will be 10 working days.

If upon receipt of the request the contributor cannot fully respond they should advise the FOI Administrator as soon as possible.

Whenever possible, requests should be responded to as soon as possible, and within the given timescale at the latest.

Does the Trust have the requested information?

Under the Act, the Trust has a duty to 'confirm or deny' whether it hold the requested information regardless of whether the information can be provided or not, unless by confirming or denying the Trust would be inadvertently providing affirmation.

The following factors cannot be taken into account when assessing whether to disclose the requested information:

- Identity of a person
- Information may be misunderstood or regarded as too technical/complex
- Embarrassment to public authority
- Status of information (draft/current to some degree)
- Number of exemptions being claimed
- Accuracy/incomplete information
- Disclosure will lead to poorer record keeping
- Loss of confidence in the Organisation.

Information provided by the Trust in response to a request under the Act remains copyrighted and can only be used for the applicant's personal use or for other specific uses permitted in the Copyright, Designs and Patents Act 1988.

A request for information cannot be refused on the grounds of an inability to locate a document or information due to poor records management. It is a criminal offence to destroy material because it has been requested by the Act.

Exemptions

If the Trust does have the information it is important to consider whether it is appropriate to disclose. In cases where it is not appropriate an exemption must be applied, this can be partial or complete. Some exemptions must be qualified by a public interest test.

The most frequently applied exemptions to be used within the Trust are

- **Section 12 Cost and time compliance** (18 Hours)
- **Section 21 Information reasonably accessible by other means** (via Website etc.)
- **Section 40 Personal information**, and
- **Section 43 Commercially sensitive information** (e.g. Breakdown of contracts)

Detailed guidance on all exemptions is available from the ICO <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Section 12 Cost and Time Compliance

In accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, the Trust has the right to refuse to process any request for information where the costs associated with that production would exceed £450. This is calculated at the flat rate of £25 per hour and equates to **18 working hours**. This is regardless of actual salary or job role. Not all activities associated with the production of information will be chargeable, e.g. time required to redact documents of personal information.

There is no official requirement for you to include an estimate of the costs in the refusal notice. However, you must give the requester reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits.

When calculating the costs of complying, you can aggregate (total) the costs of all related requests you receive within 60 working days from the same person or from people who seem to be working together.

Section 21 Information in the public domain (if some information is already publicly available)

This exemption applies if the information requested is already accessible to the requester. You could apply this if you know that the requester already has the information, or if it is already in the public domain. For this exemption, you will need to take into account any information the requester gives you about their circumstances. For example, if information is available to view in a public library in Southampton, it may be reasonably accessible to a local resident but not to somebody living in Glasgow. Similarly, an elderly or infirm requester may tell you they don't have access to the internet at home and find it difficult to go to their local library, so information available only over the internet would not be reasonably accessible to them.

Section 40 Data Protection (personal information).

The Trust will only release names and Trust contact details of Executive Directors, Consultants and other senior staff whose information is already published on the Trust's public website.

Personal contact details (i.e. home address, home telephone number, personal email address) will never be released in response to a request under the Act.

Requests for salary information will be answered by providing Agenda for Change pay bands.

Where a person falls outside of Agenda for Change pay bands, their salary will be given in £10,000 bands. Requesters will be referred to the Annual Report if requesting information regarding Executive Director’s salaries.

All responses should be screened for the potential to identify individuals from data sets. As a general principle where data set figures are less than 5 a partial exemption would be applied under section 40. Consideration should also be given to previous requests and the potential for mosaic theory, whereby individuals are able to gather evidence to create new information.

Section 43 Prejudice to commercial interests

This exemption covers two situations:

- when information constitutes a trade secret (such as the recipe for a branded product); or
- when complying with the request would prejudice or would be likely to prejudice the Trusts commercial interests.

Responding to requests

Upon collation of the information the contributor will email the information in the requested format to the FreedomOfInfo@uhbristol.nhs.uk mail box, along with confirmation that the information has been approved for release by a senior member of staff (Deputy Director/Director/ Executive).

Once the information has been received by the FOI Administrator it will be transposed into the standard letter of response template and provided to the requestor.

The application of any *qualified* exemptions will be approved by the Trust Secretary.

Every applicant will be informed of the procedure for requesting an internal review of the Trust’s handing of the request, and of how to make a complaint to the ICO if they are dissatisfied with the response. **Appendix B** contains the Trust’s response letter template which includes details on ‘how to request a review’ letter.

<p>RELATED DOCUMENTS</p>	<p>Information Governance Policy http://nww.avon.nhs.uk/dms/download.aspx?did=11662 Information Commissioner’s Office FOI Guidance https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/</p>
<p>AUTHORISING BODY</p>	<p>Information Risk Management Group</p>
<p>QUERIES</p>	<p>FOI Administrator ‘ [REDACTED] FreedomOfInfo@uhbristol.nhs.uk Deputy Trust Secretary [REDACTED] Trust Secretary [REDACTED]</p>

Appendix A

Qualified – This requires the Trust to apply the Public Interest Test (PIT) in disclosing the requested information and consider the arguments for and against disclosure.

Absolute – No Public Interest Test required

Qualified Exemptions –Public Interest Needed

Section	Exemption
22	Intended for future publication
24	National security
26	Defence – Subject to prejudice test
28	Relations with the UK
29	Economy
30	Investigations
31	Law enforcement
33	Public audit
35	Policy Formulation Law Officer's advice and Ministerial Private Office
36	Effective conduct of public affairs
37	Communications with Her Majesty and the Awarding of Honours
38	Health and safety
42	Legal professional privilege
43	Commercial Interest / Public sector contracts / Commercial detriment

Absolute Exemptions – No Public Interest Test Required.

12	Cost compliance – estimate and breakdown of cost required.
14	Vexatious request or Repeated request
21	Information reasonably accessible by other means
27	International relations – subject to prejudice test.
32	Information contained in court records
34	Parliamentary privilege
39	Environmental information i.e. gas, water, energy, waste, emissions.
40	Personal information (Data Protection Act)
41	Information provided in confidence
44	Prohibitions on disclosure

Appendix B

Handling/Responding to a request

