



# Freedom of Information Policy

<b>Policy number and category</b>	IG11	Information Governance
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<b>Ratifying committee or executive director</b>	Information Governance Steering Group	
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<b>Executive director</b>	Executive Director of Finance	
<b>Policy lead</b>	Head of Information Governance	
<b>Policy author</b> <i>(if different from above)</i>		
<b>Exec Sign off Signature</b> (electronic)		
<b>Disclosable under Freedom of Information Act 2000</b>	Yes	

## Policy context

- The purpose of this policy is to ensure that the Trust has a robust approach to the management of Freedom of Information requests within the organisation including clarity of roles and responsibilities enabling compliance with the Freedom of Information Act 2000.

## Policy requirement

This policy has been developed to:

- Ensure that the public have a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions
- Ensure that the Trust has robust assurance processes and systems in place to comply with the requirements of the Act
- Ensure that all staff are aware of their roles and responsibilities relating to freedom of information requests
- Ensure that the Trust can respond appropriately to freedom of information requests within the national requirement of 20 working days from receipt by the organisation

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## **1.0 INTRODUCTION**

### **1.1 Rationale**

The Freedom of Information Act 2000 is part of the Government's commitment to greater openness in the public sector, a commitment supported by Birmingham and Solihull Mental Health NHS Foundation Trust, referred to hereafter as the Trust.

The Freedom of Information Act 2000, referred to hereafter as the Act, supports this aim by helping transform the culture of the public sector to one of greater openness. It enables members of the public to question the decisions of public authorities more closely ensuring that the services we provide are efficiently and properly delivered.

The main features of the Act are:

- a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions
- in cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
  - inform the applicant (requester) whether they hold the information requested, and
  - communicate the information to the applicant, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure
- a duty on every public authority to adopt and maintain a Publication Scheme
- the Information Commissioner's Office has powers to enforce the rights created by the Act and to promote good practice, along with an Information Tribunal

The Freedom of Information Act Policy is a statement of what the Trust intends to do to ensure compliance with the Act.

### **1.2 Scope**

The Freedom of Information Act Policy will apply to all Trust employees and to Non-Executive Directors.

The Policy will provide a framework within which the Trust will ensure compliance with the requirements of the Act.

The Policy will underpin any operational procedures and activities connected with the implementation of the Act.

### **1.3 Principles**

The Policy supports the principle that openness and not secrecy should be the norm in public life. The Trust wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the Trust will facilitate the development of such an environment.

Individuals also have a right to privacy and confidentiality. This policy does not overturn the Common Law Duties of Confidentiality or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access

provisions of the General Data Protection Regulations and Data Protection Act 2018 and is dealt with in other Trust policies.

Public Authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.

Staff will have access to expert knowledge to assist and support them in understanding the implications of the Act and the Policy sets out the framework to provide this knowledge.

## **2: POLICY**

This policy has been developed to provide details of the obligations of the Trust under the Act and to ensure compliance with such obligations.

To ensure that the public have a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions.

To ensure that the Trust has robust assurance processes and systems in place to comply with the requirements of the Act.

To ensure that all staff are aware of their roles and responsibilities relating to freedom of information requests.

To ensure that the Trust can respond appropriately to freedom of information requests within the national requirement of 20 working days from receipt by the organisation.

## **3: PROCEDURE**

The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act.

### **3.1 Publication Scheme**

The Trust has adopted a model Publication Scheme in line with the requirements of the Information Commissioner's Office. This is permissible under section 20 of the Act and ensures compliance with section 19 of the legislation.

The Trust's Publication Scheme is a prospective document, detailing the information that the Trust publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Scheme is available in hard copy on request and through our website.

Applications for information listed in the Publication Scheme may be received verbally or in writing.

### **3.2 General Rights of Access**

Section 1 of the Act gives a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information to the Trust is entitled:

- (a) to be informed in writing whether the Trust holds the information of the description specified in the request, and
- (b) if the Trust holds the information to have that information communicated to them

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to the certain conditions and exemptions. The Trust will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describes the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

### **3.3 Conditions and Exemptions**

The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where the Trust:

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement.

The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

Under section 2 of the Act, the Trust does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information. The Part II exemptions are listed in appendix two of this Policy. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations.

The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication of information that exceeds this limit.

The Trust is not obliged to comply with a request for information if the request is vexatious. Where the Trust has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

### **3.4 Charges and Fees**

The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a memory stick. The Publication Scheme and the procedures that support this Policy will provide further guidance on charging.

The Trust will follow, if ever they are published, the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied. At present no costs for complying with a request, unless over 2.5 days work, can be levied other than for the cost of the physical media (i.e. copying, disks etc).

In all cases where the Trust chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

### **3.5 Time limits for Compliance with Requests**

The Trust will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All staff will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with section 9(2), the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.

If the Trust chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued with twenty working days informing the applicant of this decision.

### **3.6 Means by Which Information will be Conveyed**

When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant

The Trust shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.

In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If the Trust determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

The Trust will establish systems and procedures to monitor the provision of information arising from requests under the Act.

### **3.7 Refusal of Requests**

As indicated above, the duty to confirm or deny does not arise if the Trust:

- (a) using section 2 of the Act applies an exemption under Part II of the Act, as illustrated in appendix two
- (b) has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant
- (c) under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit
- (d) can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust under the Act and of the right conferred by section 50 of the Act.

If the Trust is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information a notice will be issued within twenty working days under s17 of the Act. The notice will:

- (a) state that fact
- (b) specify the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Where the Trust is relying on a claim:

- (a) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) of the Act as an absolute exemption is relevant to the request, or
- (b) that the information is exempt only by virtue of a qualified exemption, a provision not specified in section 2(3),

and at the time when the notice is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 of the Act – the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Trust expects that a decision will have been reached.

As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the Act, such estimates should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Trust will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

If applying a qualified exemption under subsection (1)(b) or (2)(b) of section 2 of the Act the Trust will, either in the notice issued or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information, or
- (b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement should not involve the disclosure of information which would itself be exempt information.

If the Trust is relying on a claim that section 12 or 14 of the Act apply, the notice will state that fact. If the Trust is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

The Trust will keep a record of all notices issued to refuse requests for information.

### **3.8 Duty to Provide Advice and Assistance**

The Trust will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to

do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the Act.

The Trust will ensure that the systems and procedures that are deployed to meet the section 16 duty also conform to the Code of Practice issued under section 45 of the Act.

### **3.9 Transferring Requests for Information**

A request can only be transferred where the Trust receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority.

If the Trust is in receipt of a request holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Trust recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).

Upon receiving the initial request for information, the Trust will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Trust will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Trust must be certain as to the extent of the information relating to the request which it holds itself.

If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

- (a) contacting the applicant and informing him or her that the information requested may be held by another public authority
- (b) suggesting that the applicant re-applies to the authority which the original authority believes to hold the information
- (c) providing him or her with contact details for that authority.

If the Trust considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it.

A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Trust will consider:

- (a) whether a transfer is appropriate; and if so
- (b) whether the applicant is likely to have any grounds to object to the transfer

If the Trust reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant but will inform the applicant that it has done so.

Where there are reasonable grounds to believe an applicant is likely to object, the Trust will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Trust is unable either to advise the applicant which it holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

### **3.10 Consultation with Third Parties**

The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the Common Law Duty of Confidentiality or where it constitutes "personal data" within the meaning of the General Data Protection Regulation (GDPR) or the Data Protection Act 2018. Unless an exemption provided for in GDPR or the Data Protection Act 2018 applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption at section 41 of the Act would apply), the Trust will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

Where information constitutes "personal data" within the meaning of data protection legislation, the Trust will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

The Trust will undertake consultation where:

- (a) the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- (b) the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

The Trust may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Trust will consider what is the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request.

Consultation will be unnecessary where:

- (a) the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act

(b) the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information

(c) no exemption applies and so under the Act's provisions, the information must be provided.

Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

### **3.11 Public Sector Contracts**

When entering into contracts the Trust will refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act.

Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible.

Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. The Trust will take care when drawing up any such schedule and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.

It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor information which the authority has provided to the contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms.

In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

### **3.12 Accepting Information in Confidence from Third Parties**

The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided.

The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

### **3.13 Complaints about the Discharge of the Duties of the Trust**

The Trust will implement a procedure for dealing with complaints about the discharge of the duties of the Trust under the Act, including the handling of requests for information.

The procedure will refer applicants to the right under section 50 of the Act to apply to the Information Commissioner's Office if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

### **3.14 Records Management**

The Trust has a separate policy with supporting systems and procedures that will ensure appropriate management of records under section 46 of the Act and the Records Management:- NHS Code of Practice.

The policy and associated procedures address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Trust.

### **3.15 Requests Relating to Personal Information**

The Trust will not release personal information relating to member of staff below band 8c.

It is Trust policy to not release any information (i.e. redundancy payments, reported conditions, claims made) affecting two individuals or less to prevent breaches of data protection legislation.

### **3.16 Requests Relating to Trust Policies, Standard Operating Procedure or Guidelines**

As a general rule, all policies, and guidelines will be released under the FOI Act unless the document is in draft and is out for consultation.

Standard operating procedures will require additional review to ensure they do not include any commercially sensitive information or statements that may impact an individual health and safety.

#### 4: Responsibilities

This should summarise defined responsibilities relevant to the policy.

Post(s)	Responsibilities	Ref
All Staff	All staff must ensure they understand and adhere to the requirements of this policy.	
Service, Clinical and Corporate Directors	Ensure the policy and its responsibilities are cascaded to all relevant staff	
Policy Lead	Keep the policy up to date in line with any legislative changes or amendments Communicate this to all relevant Leads across the Trust	
Executive Director	Accountable for ensuring the policy is up to date and complied with	

#### 5: Development and Consultation process

Consultation summary		
Date policy issued for consultation	May 2020	
Number of versions produced for consultation	1	
Committees / meetings where policy formally discussed	Date(s)	
Information Governance Steering Group		
Where received	Summary of feedback	Actions / Response

#### 6: Reference documents

- ✦ Freedom of Information Act 2000
- ✦ Data Protection Act 2018
- ✦ General Data Protection Regulations 2016

#### 7: Bibliography:

None.

## 8: Glossary

**Absolute exemption** – applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act.

Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of non-disclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

**Applicant** - the individual(s), group or organisation requesting access to information under the Act.

**Duty to confirm or deny** - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

**Fees Notice** – a written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses.

**Fees Regulations** – national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

**General right of access** - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

**Information Commissioner** - The Information Commissioner enforces and oversees the General Data Protection Regulation, Data Protection Act 2018, and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

**Lord Chancellor's Department** - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts.
- The appointment of judges, magistrates and other judicial office holders.
- The administration of legal aid.
- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation, and legal aid.

**Public authority** - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

(a) on the face of the Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;

(b) by order under section 4(1) adding to Schedule 1 anybody or the holder of any office that satisfies certain specified conditions;

(c) by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or

(d) by reference to the definition of a publicly owned company in section 6.

**Publication Scheme** - a scheme specifying the classes of information which it publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

**Qualified exemption** - Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

## 9: Audit and assurance

Element to be monitored	Lead	Tool	Frequency	Reporting Committee
Legal requirement to respond to FOIs within 20 working days	Head of Information Governance	Information Governance Dashboard	Monthly	Information Governance Steering Group

## 10. Appendices

Please refer to the following pages.

## Equality Analysis Screening Form

A word version of this document can be found on the HR support pages on Connect

<http://connect/corporate/humanresources/managementsupport/Pages/default.aspx>

<b>Title of Proposal</b>		Freedom of Information Policy		
<b>Person Completing this proposal</b>		Kirstie Macmillan	<b>Role or title</b>	Head of Information Governance
<b>Division</b>		Corporate	<b>Service Area</b>	Performance and Information
<b>Date Started</b>		23.06.2020	<b>Date completed</b>	23.06.2020
<b>Main purpose and aims of the proposal and how it fits in with the wider strategic aims and objectives of the organisation.</b>				
The purpose of this policy is to outline how the Trust will meet the statutory obligations associated with the Freedom of Information Act 2000, an supporting staff to apply these principles.				
<b>Who will benefit from the proposal?</b>				
Information Governance Team who have the main responsibility for freedom of information and also freedom of information leads.				
<b>Impacts on different Personal Protected Characteristics – Helpful Questions:</b>				
<i>Does this proposal promote equality of opportunity?</i>		<i>Promote good community relations?</i>		
<i>Eliminate discrimination?</i>		<i>Promote positive attitudes towards disabled people?</i>		
<i>Eliminate harassment?</i>		<i>Consider more favourable treatment of disabled people?</i>		
<i>Eliminate victimisation?</i>		<i>Promote involvement and consultation?</i>		
		<i>Protect and promote human rights?</i>		
<b>Please click in the relevant impact box or leave blank if you feel there is no particular impact.</b>				
<b>Personal Protected Characteristic</b>	<b>No/Minimum Impact</b>	<b>Negative Impact</b>	<b>Positive Impact</b>	<b>Please list details or evidence of why there might be a positive, negative or no impact on protected characteristics.</b>
<b>Age</b>	x			
Including children and people over 65 Is it easy for someone of any age to find out about your service or access your proposal? Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
<b>Disability</b>	x			
Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues				

Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability? Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?				
<b>Gender</b>	x			
This can include male and female or someone who has completed the gender reassignment process from one sex to another Do you have flexible working arrangements for either sex? Is it easier for either men or women to access your proposal?				
<b>Marriage or Civil Partnerships</b>	x			
People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?				
<b>Pregnancy or Maternity</b>	x			
This includes women having a baby and women just after they have had a baby Does your service accommodate the needs of expectant and post natal mothers both as staff and service users? Can your service treat staff and patients with dignity and respect relation in to pregnancy and maternity?				
<b>Race or Ethnicity</b>	x			
Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees What training does staff have to respond to the cultural needs of different ethnic groups? What arrangements are in place to communicate with people who do not have English as a first language?				
<b>Religion or Belief</b>	x			
Including humanists and non-believers Is there easy access to a prayer or quiet room to your service delivery area? When organising events – Do you take necessary steps to make sure that spiritual requirements are met?				
<b>Sexual Orientation</b>	x			
Including gay men, lesbians and bisexual people Does your service use visual images that could be people from any background or are the images mainly heterosexual couples? Does staff in your workplace feel comfortable about being 'out' or would office culture make them feel this might not be a good idea?				
<b>Transgender or Gender Reassignment</b>	x			
This will include people who are in the process of or in a care pathway changing from one gender to another				

Have you considered the possible needs of transgender staff and service users in the development of your proposal or service?				
<b>Human Rights</b>	x			
Affecting someone's right to Life, Dignity and Respect? Caring for other people or protecting them from danger? The detention of an individual inadvertently or placing someone in a humiliating situation or position?				
<b>If a negative or disproportionate impact has been identified in any of the key areas would this difference be illegal / unlawful? I.e. Would it be discriminatory under anti-discrimination legislation. (The Equality Act 2010, Human Rights Act 1998)</b>				
	<b>Yes</b>	<b>No</b>		
<b>What do you consider the level of negative impact to be?</b>	<b>High Impact</b>	<b>Medium Impact</b>	<b>Low Impact</b>	<b>No Impact</b>
				x
If the impact could be discriminatory in law, please contact the <b>Equality and Diversity Lead</b> immediately to determine the next course of action. If the negative impact is high a Full Equality Analysis will be required.				
If you are unsure how to answer the above questions, or if you have assessed the impact as medium, please seek further guidance from the <b>Equality and Diversity Lead</b> before proceeding.				
If the proposal does not have a negative impact or the impact is considered low, reasonable or justifiable, then please complete the rest of the form below with any required redial actions, and forward to the <b>Equality and Diversity Lead</b> .				
<b>Action Planning:</b>				
How could you minimise or remove any negative impact identified even if this is of low significance?				
The Freedom of Information Act 2000 is mandatory legislation that the Trust must adhere to. If a requester identified that they required the requested information in a certain format, the Trust will try and accommodate this request.				
How will any impact or planned actions be monitored and reviewed?				
This will be monitored on a case by case basis.				
How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic.				

The Trust will use the publication scheme as a means of ensuring everyone has access to key pieces of information about the Trust.

Please save and keep one copy and then send a copy with a copy of the proposal to the Senior Equality and Diversity Lead at [bsmhft.hr@nhs.net](mailto:bsmhft.hr@nhs.net). The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis.

### Full Equality Analysis Form

<b>Title of Proposal</b>			
<b>Person Completing this proposal</b>		<b>Role or title</b>	
<b>Division/Department</b>		<b>Service Area</b>	
<b>Date Started</b>		<b>Date completed</b>	
Looking back at the screening tool, in what areas are there concerns that the proposal treats groups differently, unfairly or disproportionately as a result of their personal protected characteristics?			
<b>Summarise the likely negative impacts</b>		<b>Summarise the likely positive impact</b>	
<b>What previous or planned consultation or research on this proposal has taken place with groups from different sections of the community?</b>			
		<b>Please provide list of groups consulted.</b>	<b>Summary of consultation / research carried out or planned. If already carried out, what does it tell you about the negative impact?</b>
<b>Group(s) (Community, service user, stakeholders or carers)</b>			
<b>Staff Group(s)</b>			
<b>What up-to-date information or data is available about the different groups the proposal may have a negative impact on?</b>			

<b>Are there any gaps in your previous or planned consultations, research or information? If so are there any other experts, groups that could be contacted to get further views or evidence?</b>					
<b>Yes</b>		<b>No</b>			
<b>If yes please list below</b>					
<b>As a result of this Full Equality Analysis and consultation, what changes need to be made to the proposal? (You may wish to put this information into an action plan and attach to the proposal)</b>					
<b>Will any negative impact now be:</b>					
<b>Low:</b>		<b>Legal:</b>		<b>Justifiable:</b>	
<b>Will the changes made ensure that any negative impact is lawful or justifiable?</b>					
<b>Have you established a monitoring system and review process to assess the successful implementation of the proposal? Please explain how this will be done below.</b>					
<b>Action Planning: How could you minimise or remove any negative impact identified even if this is of low significance?</b>					
<b>How will any impact or planned actions be monitored and reviewed?</b>					

<b>How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic?</b>

Please save and keep one copy and then send a copy with a copy of the proposal to the Senior Equality and Diversity Lead at [bsmhft.hr@nhs.net](mailto:bsmhft.hr@nhs.net) . The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis.

## Appendix Two

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

There are two types of class exemption:

- (a) Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not 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 under the Act are:

- section 21, Information accessible to 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, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- section 40, Personal Information (where disclosure may contravene the General Data Protection Regulation)
- section 41, Information provided in confidence
- section 44, Prohibitions on disclosure

The exemptions that are qualified by the public interest test 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 (for all public authorities except the House of Commons and the House of Lords)
- 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

