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LEAD EXECUTIVE DIRECTOR DGM	Director of Finance (SIRO)
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TARGET AUDIENCE:	All Trust Personnel
DOCUMENT PURPOSE:	To identify the organisational structures that will fulfil the requirements of the Freedom of Information Act 2000, and specify how the organisation will conform to the two required codes of practice for access and records management.
To be read in conjunction with (identify which internal documents)	

SUPPORTING REFERENCES	<ul style="list-style-type: none"> • Freedom of Information Act 2000 • NHS Digital Data Security and Protection Toolkit (www.dsptoolkit.nhs.uk) • Information Commissioner's Office (https://ico.org.uk) • ELHT Communication Strategy • ELHT Information Governance policy • ELHT Records management strategy
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CONSULTATION		
	Committee/Group	Date
Consultation	Information Governance Steering Group	2018
Approval Committee	Information Governance Steering Group	2018
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AMENDMENTS:	Full revision	

Policy Summary

- The Freedom of Information (FOI) Policy outlines good practice and identifies the responsibilities of staff in terms of the FOI Act 2000 and the Environmental Information Regulations 2004.
- All Trust staff, permanent and temporary, including contractors and Non-Executive Directors must be aware of and adhere to this Policy which applies to all individuals engaged in the discharge of the duties of this Trust. A failure to adhere to this Policy and relevant procedures may result in the Information Commissioner's Office taking regulatory action against the Trust and may lead to disciplinary action.
- The Trust Publication Scheme is available on the internet under the About Us section.
- The requests that fall under the general rights of access to recorded information by individual applicants must be made in writing. These requests will cover information that is not listed in the Publication Scheme.
- All information requests under the FOI Act 2000 should be directed to the FOI inbox at foi@elht.nhs.uk or via post to Freedom of Information Requests, East Lancashire Hospitals NHS Trust, Information Governance, Royal Blackburn Teaching Hospitals, Haslingden Road, Blackburn BB2 3HH.
- All complaints, verbal or written (including those transmitted by electronic means) with regard to FOI requests must be referred immediately to the Freedom of Information Officer.
- Compliance with the FOI Policy is monitored and overseen by the Information Governance Steering Group reporting to the Audit Committee.

1. Introduction

The Freedom of Information Act 2000 (FOI Act 2000) assists members of the public to question the decisions of public authorities more closely. East Lancashire Hospitals NHS Trust is committed to supporting a culture of openness and transparency across the organisation and has developed this policy to support the provision of information in line with the requirements of the FOI Act 2000.

1.1 Main features of the Act

- Anyone can request access to recorded information (subject to exemptions and conditions) held by the Trust. The term “anyone” could include groups or persons such as members of the public, the press, pressure groups, and political parties.
- The Act gives applicants two related rights:
 - i) The right to be told whether the information exists
 - ii) The right to receive the information
- The Act includes exemptions which may restrict the release of information and are detailed in the appendix.
- Following a request, a public authority has 20 working days to process that request.
- Fees may be charged according to guidelines issued by the government.
- The Act requires that public authorities maintain a **Publication Scheme** of information that is readily available. The Trust’s publication is available from the Trust website.

1.2 Scope

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

The policy provides a framework within which the Trust will ensure compliance with the requirements of the Act.

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

2 Responsibilities

All Staff and Non-Executive Directors are obliged to adhere to this policy. A failure to adhere to this policy and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring their staff are aware of and adhere to this policy. There are enforcement procedures in the Act which can lead to fines and convictions for the Trust and its employees.

2.1 Freedom of Information Roles

There are a number of staff who have specific responsibilities in respect of the Act, they are listed below together with their main responsibilities in relation to the FOI Act 2000:

I. Freedom of Information Officer

- Produces and maintains the Publication Scheme
- Oversees the operation of the FOI request process
- Refers complex requests to experts as appropriate
- Provides responses to applicants
- Ensures maintenance of FOI request database
- Provides advice on the operation of the FOI Act 2000.
- Provides reports to the Information Governance Steering Group
- Corporate lead for FOI matters
- Produces and updates the Freedom of Information Policy
- Identifies the need for resources to support the FOI Process.

II. Data Protection Officer / FOI Internal Review Panel

- Determines all requests for internal review of decisions made by the FOI Officer

III. Information Governance Steering Group

- Oversees Trust's mechanisms for complying with FOI requests and recommends any necessary changes

2.2 Training

All the above members of staff will be required to take training appropriate to their role in line with the Information Governance Toolkit. Training materials will be produced as necessary for members of staff.

3. Freedom of Information Publication Scheme

3.1 Section 19 of the Act has required that the Trust adopts a Publication Scheme. The scheme sets out:

- The classes of information the Trust publishes
- The manner in which the information is published
- Details of any charges to be made for accessing information included in the Publication Scheme.

3.2 The scheme has to be made available in hard format and is also available through the Trust website.

3.3 The scheme is a living document and must be updated as appropriate when new documents are published or current information included in the scheme requires changing.

3.4 The Trust must endeavour to ensure as many documents and publications can be accessed through the scheme. This is to ensure that the scheme meets the overall aim for its implementation i.e. to provide easy access to Trust information and an environment of general openness. Maintaining an up to date complete Publication Scheme should also reduce the number of requests for information made through the Act.

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

The means of accessing data in the Publication Scheme and the charging arrangements can be seen in the web version of the scheme or by contacting:

Freedom of Information Officer
Freedom of Information Requests
East Lancashire Hospitals NHS Trust
Information Governance
Royal Blackburn Hospital
Haslingden Road
Blackburn
BB2 3HH

4. Requests for Trust Information

4.1 Right of access

4.1.1 The Act gives a general right of access to anyone to access information held by the Trust and in particular two related rights:-

- The right to be told whether the information exists

- The right to receive the information.

4.1.2 The term anyone will literally mean any individual of any nationality living in the UK or otherwise, it will also include any organisation such as a newspaper, political party, public or private sector company. The person making a request shall be known as the **applicant**.

4.2 Advice and assistance to applicants

4.2.1 The Act places a duty on the Trust to provide advice and assistance to the applicant. The Trust must be seen to have provided adequate information to the applicant at every relevant stage of the process, in terms of:-

- Response letters
- Refusal notices
- Fee notices
- Advice communications – informing the applicant about delays, alternative means of obtaining the information etc.

4.3 What constitutes a Request?

4.3.1 A request for information must be in writing (the only exception being where a request is for environmental information - see section 4.8) this will include legible requests made by electronic means.

The Trust will not pursue the request unless it has been provided with the appropriate information from the applicant to do so. The Trust will make reasonable efforts to contact the applicant to obtain this information if the initial request does not include adequate information.

The person making the request does not have to state they are making a request under the Freedom of Information Act. Staff will need to recognise when a request for information falls under the Act and be aware of the procedure thereafter for dealing with requests. There will be a duty on staff to contact the FOI Officer as soon as they have received a FOI request in writing.

4.3.2 All written communications (including by electronic means) requesting information held by the Trust will be classed as FOI requests unless:

1. It is a subject access request under the Data Protection Act 2018
2. The request is for an information booklet/paper that has been produced specifically for public consumption.

3. The applicant has requested certain information after seeing a poster / ELHT publicity material / publication scheme inviting them to contact the ELHT for further details / information.
4. The request is for information that would be classed as for “normal business purposes” for example:
 - a) An agency requesting monthly statistical data
 - b) An organisation writing in to ask who to send their monthly updates to.

These requests should be dealt with in the usual manner.

The FOI Officer must retain a copy of the original request or at least a copy of the request in a filing system.

4.4 Telephone Calls

4.4.1 Where telephone requests for information that could potentially be a FOI request are received, the staff member should inform the applicant that a request has to be put in writing. It may be appropriate for them to refer the applicant to the FOI Officer who can advise them regarding the information they need to provide. Please see Environmental Information Regulations (section 4.8) re: verbal requests.

4.4.2 Where the caller quotes the FOI Act but it is apparent that the request is a subject access request under the Data Protection Act 2018, the caller should be informed of this and referred to the appropriate department or told the procedure for making such a request. This would not be logged as a FOI request.

4.4.3 Where a caller has contacted the Trust for information after seeing a poster / ELHT publicity material / publication scheme inviting them to contact the ELHT for further details / information, the information should be provided as requested.

4.4.4 Under the Environmental Information Regulations an applicant can make a valid request for information over the telephone or other means besides a written communication (**see section 4.8**)

4.5 Exemptions

4.5.1 Certain information that the Trust holds may be subject to exemptions and conditions of the Act which may mean that information is not released to an applicant. The process of informing the applicant of the outcome of their request is known as the “**duty to confirm or deny**”.

4.5.2 There are a number of exemptions (**see appendix 1**) in the Act which may mean a request for information can be refused. Eight of the exemptions are **absolute**

exemptions which mean the request will be refused. The rest of the exemptions are known as **qualified exemptions**. These are cases where the Trust has identified a possible exemption and must consider whether there is a greater public interest in providing the information or use the exemption to refuse access. One of the most relevant to the ELHT will be where personal information is contained in the requested information (**see 4.6**).

4.5.3 Decisions on applying exemptions and conditions will be initially made by the FOI Officer, but more complex cases will be passed to the Trust's experts for a decision. The FOI experts may decide to take legal advice in certain cases. The process on decision making is outlined in the Trust FOI procedure for Handling Requests.

4.6 Personal Information

4.6.1 Personal data should not be released unless conditions of the Data Protection Act 2018 are met. Personal information is information which identifies a living individual and usually relates specifically to the individual and includes information that they would class as private i.e. their health information, telephone number, address, banking details etc.

4.6.2 Where an individual (or their representative) makes a request for their own personal information held by the Trust it will be classed as a subject access under the Data Protection Act 2018.

4.6.3 Where applicant requests information which, for example includes within it another individual's personal information, that individual's information would only be released if conditions in the Data Protection Act 2018 could be met – this usually means gaining consent from the individual.

4.6.4 Personal information which identifies ELHT staff members but only relates to the public functions they carry out in their job may be made available if requested through the FOI Act. These may include details such as:

- Name
- Job title
- Role
- Responsibilities
- Work contact information

4.6.5 Staff must be aware that this information may be made available if requested under the Act, for instance their name and job title listed in minutes of meetings.

4.6.6 Where a staff member strongly objects to information being published, ELHT would take on board the reasons for making an objection and decide accordingly regarding a disclosure. There may be circumstances where release of this staff information may cause some risk to the staff members concerned, again this will be taken into consideration before any decision on release.

4.6.7 Where a request for more specific staff information is made i.e. salary or travel expenses details, these requests should be referred to the Freedom of Information Officer.

4.7 Other Conditions for Refusal

4.7.1 The Trust is not obliged to comply with a request for information which it considers is vexatious, within the terms of the guidance provided by the Information Commissioners Office.

4.7.2 Where the Trust has previously complied with a request for information, it is not obliged to comply with a similar or identical request by the same applicant unless a reasonable interval has elapsed between the two requests.

4.7.3 The Trust does not have to comply with a request where the cost of complying with the request exceeds the appropriate limit (**see 4.9 Fees**).

Similarly where the Trust believes that a person is working in conjunction with a person or persons to make a number of similar or identical requests which appear to be part of an organised campaign and which exceed the appropriate limit, the Trust does not have to comply with the request.

4.8 Environmental Information Regulations

4.8.1 The Environmental Information Regulations (EIR) were introduced in 1992. Request for environmental information held by the Trust may initially come through as a request under Freedom of Information; once the request is identified as environmental it should be dealt with under the EIRs. Like the Freedom of Information Act they give access rights to any person of any nationality but refer specifically to information about the environment. Applicants do not have to quote the regulations and requests also have to be processed within 20 working days. An environmental information request can be made verbally as well as in writing

4.8.2 The EIR request would be logged initially as a FOI request. The applicant should be informed that the request is being processed but under the EIR.

4.9 Fees

4.9.1 The Act does not require charges to be made, but the Trust has discretion to charge applicants a fee in accordance with the Fees Regulations.

4.9.2 The Fee Regulations do not apply to:

- Information available under the publication scheme
- Information accessible by other means.

4.9.3 The Trust does not have to process a request where it estimates the cost of processing the request exceeds the appropriate limit. The cost limit is calculated at a flat rate of £25 per hour. The limit is currently £450 (18 hours).

4.9.4 Where it would **not exceed** the appropriate limit to comply with the request, a public authority may charge a fee for expenses it reasonably expects to incur through providing information requested under Act, however it is only possible to charge where information will be released. It is not possible to charge where information will be withheld due to exemptions.

4.9.5 Should the public authority intend to charge for the cost of providing information, a fees notice should be sent as soon as possible within the 20 working day response period. The fee notice should inform applicants:

- How the fee has been calculated
- That the 20 working day period for responding to the request will be paused until payment is received
- How to pay the fee
- Their rights of complaint via internal review and to the Information Commissioner about the fee levied.

4.9.6 Public authorities may charge for:

- Actual production expenses (e.g. printing, photocopying or redacting exempt information)
- Transmission costs (e.g. postage)
- Complying with the applicants preferences about the format they would like to receive the information (e.g. scanning to a CD or on a USB stick)

4.9.7 Where it **would** exceed the appropriate limit to comply with the request, a public authority may either:

- Refuse the request due to exceeding the appropriate limit
- Provide a sensible and reasonable estimate as to the cost to comply with the request

4.9.8 If the request is refused, the public authority should consider what advice and assistance can be provided within the limit to help the applicant reframe or refocus their request. This could include suggesting the scope of the request is reduced. Any refined request should be treated as a new request for the purposes of the Act.

4.9.9 The applicant will be required to pay any requested fees within a period of three months beginning on the day on which the fee notice is sent to them.

4.9.10 Fees associated with the Trust Publication Scheme are outlined in the document itself which can be accessed from the website or by contacting:

Freedom of Information Officer, Information Governance, Royal Blackburn Teaching Hospital, Haslingden Road, Blackburn BB2 3HH

4.10 Timescale for Processing Requests

4.10.1 All requests must be processed within 20 working days of receipt of the request.

4.10.2 Where decisions relating to the public interest test apply to a request, the Trust should aim to make all decisions within 20 days. Where a decision cannot be reached within the 20 day period an estimate must be given to the applicant as to the date that the decision will be made.

4.10.3 Once a fee notice has been issued the 20 day time limit can be halted until as such time a fee is received from the applicant.

4.10.4 Where further information is required from an applicant in order to process a request for information, the time for complying with the request will be suspended until that information is provided. If the information is not provided within three months from the date of request the request will be treated as withdrawn.

4.11 Provision of Information

4.11.1 In general, the information will be provided in permanent format through copies of a document or the actual publication itself being sent through the post. Where possible the information will be sent through electronic means via e-mail

4.11.2 Other means of conveying the information may be considered if appropriate and of more use to the applicant:

- Viewing the information
- The provision of a digest or summary of the information in permanent format.

4.12 Transferring Requests for Information

4.12.1 Where the Trust receives a request for information that it does not hold, but that information is held by another public authority, a transfer of the request can be made.

If the request for information relates to only part of the information held by another public authority only this part of the request can be transferred, the Trust would process the rest of the request.

4.12.2 In transferring all or part of the request, the Trust should:

- Contact the applicant and inform them the information may be held by another authority
- Suggest the applicant re-applies to the other public authority
- Provide them with the relevant contact details
- Alternatively, the Trust may choose to transfer the request directly to the other public authority.

The Trust would need to advise the applicant that this has happened.

4.12.3 If the Trust has reasonable grounds to believe the applicant is likely to object to a transfer, they should only transfer the request with their permission.

4.12.4 In all cases, the Trust should be certain that the other public authority holds the information and where possible gain confirmation that it does.

4.13 Consultation with Third Parties

4.13.1 Information could be requested that may carry a duty of confidence, i.e. was provided to the Trust by a person (in this case “person” may be an individual, company, local authority or any other legal entity) with the expectation that the information would only be disclosed in accordance with the wishes of that person. Where disclosure of the information may give rise to an actionable breach of confidence, then in these cases the Trust may consult with the third party with a view to seeking their consent to disclose.

4.13.2 The FOI Officer will consult with experts on these kind of requests where appropriate as each case will be different and various points would need to be clarified such as:

- Is the information actually confidential?
- Does the person have the legal standing to take action

4.13.3 A record will be made by the FOI Officer of contact made with third parties.

4.14 Public and Private Sector Contracts

4.14.1 When entering into contracts with other public authorities, the Trust should refuse to include contractual terms which may restrict the disclosure of information held by the Trust. The Trust cannot contract out of its obligations under the Act. The Trust will only refuse to release information if an exemption under the Act applies.

4.14.2 When entering into contracts with non-public authority contractors the Trust may be under pressure to accept a confidentiality clause so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. The Trust will reject such clauses wherever possible.

4.14.3 Where in exceptional circumstances it is necessary to include non-disclosure provisions in a contract, the Trust will negotiate a schedule to be included in the contract which identifies information which should not be disclosed. Taking this into account, those restrictions could be overridden by the obligations under the Act. In any event, the Trust will not agree to hold information “in confidence” which is in fact not confidential in nature.

4.15 Refusals of Requests

4.15.1 Where a request for information is refused because of an exemption or reasons stated in section 4.7 the Trust will notify the applicant within 20 days stating one of the following:

- Which exemption applies and an explanation if the reason is not obviously apparent.
- If the exemption used is a qualified exemption to state the reasons for claiming the exemption outweighs the public interest test in disclosure.
- The fee has not been received within 3 months of the fee notice being given to the applicant.
- The request is vexatious or is a repeated request.
- The estimated cost of processing the request exceeds the appropriate limit.

4.15.2 Where a decision may not be reached within 20 days, the Trust will notify the applicant of the reasons for the delay and the estimated date by which a decision will be made.

4.15.3 All refusal notices will inform the applicant:

- About their right to complaint in relation to their freedom of information request.
- How to make a complaint to the Trust.

- Their right to complain to the Information Commissioner.

4.16 Complaints

The Trust has in place a complaint procedure to deal with complaints arising out the discharge of its duties under the Act i.e. the maintenance of its publication scheme and the handling of requests for information (see appendix 2).

4.17 Copyright

Information which is disclosed under the Act may be subject to copyright protection. If an applicant wishes to use information in a way that would infringe copyright, for example by making multiple copies, or issuing copies to the public, he or she would require a licence from the copyright holder. Her Majesty's Stationary Office (HMSO) have issued guidance on the subject in relation to crown copyright, which is available via the National Archives website or by contacting them at:

The National Archives,
Kew, Richmond,
Surrey, TW9 4DU
Tel: 020 8876 3444

5. Trust Policies and Procedures

The following Trust policies should be read in conjunction with this policy.

- Procedure for handling requests under the Freedom of Information Act 2000
- Confidentiality Policy
- Records Management Strategy
- E-mail Policy

These are available on the Trust Intranet site.

6. Further Information

Further information on and in relation to the Act can be found on the following web site:

www.ico.org.uk - The Information Commissioner's website covering both The Freedom of Information Act, and the Data Protection Act

Appendix 1: 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 disclosure information.

With the exemption of section 21 (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

<u>Section (of the Act)</u>	<u>Exemption</u>
<u>21</u>	Information accessible to applicant by other means
<u>23</u>	Information supplied by, or relating to, bodies dealing with security matters
<u>32</u>	Court Records
<u>34</u>	Parliamentary Privilege
<u>36</u>	Prejudice to effective conduct of public affairs (so far relating to information held by the House of Commons or the House of Lords)
<u>40</u>	Personal information (where disclosure may contravene the Data Protection Act 1998). (see section 4.6 of the policy).
<u>41</u>	Information provided in confidence (see section 4.13 of the policy)
<u>44</u>	Prohibitions on disclosure

Qualified Exemptions

<u>Section (of the Act)</u>	<u>Exemption</u>
<u>22</u>	Information intended for future publication
<u>22A</u>	Research Information
<u>24</u>	National Security

<u>26</u>	Defence
<u>27</u>	International Relations
<u>28</u>	Relations within the United Kingdom
<u>29</u>	The Economy
<u>30</u>	Investigations and proceedings conducted by public authorities
<u>31</u>	Law enforcement
<u>33</u>	Audit Functions
<u>35</u>	Formation of Government Policy
<u>36</u>	Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
<u>37</u>	Communications with Her Majesty, etc. and honours
<u>38</u>	Health and Safety
<u>39</u>	Environmental Information
<u>42</u>	Legal Professional Privilege
<u>43</u>	Commercial Interests

Appendix 2: Freedom of Information Act 2000 – Complaints Procedure

1	This procedure will deal with complaints arising from the Trust duties under the Freedom of Information (FOI) Act in respect of maintenance of the publication scheme, and handling of requests for information.
2	The Trust's publication scheme will notify individuals about who they should complain to about the maintenance of the scheme and inform individuals of their right to complain to the Information Commissioner's Office.
3	When communicating any decision made in relation to a request under the Act's general right of access, the Trust will notify the applicant of their right of complaint. They should be informed of the Trust complaints procedure for dealing with issues relating the publication scheme or request handling. They should also be informed of the right to complain to the Information Commissioner.
4	Any written communication (including one transmitted by electronic means) expressing dissatisfaction with the Trust response to a valid request for information, or operation of the publication scheme will be classed as a complaint.
5	Complaints should be handled by the Freedom of Information Internal Review Panel and not by person(s) party to the original decision although these persons may be consulted and/or asked to re-evaluate their decision. The FOI Officer should record on the FOI system that the request is the subject of a complaint. FOI complaints should be addressed to the Data Protection Officer, Information Governance, Royal Blackburn Hospital, Haslingden Road, Blackburn BB2 3HH.
6	In all cases, complaints should be acknowledged and the complainant informed of the Trust's target date for determining the complaint.
7	Where it is apparent the complaint will take longer than the target time, the Trust will inform the applicant and explain the decision for the delay.
8	The complaint will be arbitrated by the Trust's Freedom of Information Internal Review Panel.
9	Where the outcome of the complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant be informed as how soon this will be.
10	Where the outcome of a complaint is that procedures within the Trust have not been properly followed by Trust staff, the Trust will apologise to the applicant and take appropriate steps to prevent similar errors in future.

11	Where the outcome of a complaint is that the initial decision was correct or is otherwise in the Trust's favour, the applicant should be informed of their right to apply to the Information Commissioner at the following address: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, Telephone: 00303 123 1113 (local rate) or 01625 545 700 (national rate).
12	The response letter to the applicant should be signed by the responsible officer in the Trust for FOI compliance (the Chief Executive or SIRO).

Appendix 3: FOI Process Flowchart

