

East Kent Hospitals University NHS Foundation Trust

TRUST POLICY

Freedom of Information Act 2000 and Environmental Information Regulations 2004 Policy

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Applies to (include subsidiary companies):	
Trust staff (specify groups e.g. clinical/non-clinical):	All
Subsidiaries	No
2gether Support Solutions Ltd. as a service provider (hard and soft facilities services)	Yes

Includes references to children/young people	No
Includes references to medicines	No

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Policy Reviewers

Name and Title of Individual	Date Consulted
Head of Information Governance	June 2022
FOI, Policy & Risk Administrator	June 2022
Head of Corporate Governance, 2gether Support Solutions	June 2022
Risk Manager	June 2022
Group Company Secretary	June 2022
Intelligent Client	June 2022

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Regulatory Compliance Group	September 2022
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Summary of Key Changes Since Last Approved Version

Title change to include EIR

Clarification of Duties (changes to FOI Team roles within Trust Management)

Revised Complaints procedure (Appendix A)

Responsibility for redacting information to be disclosed lies primarily with the department providing the information

Associated Documentation

None

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1. Policy Description

- 1.1. This policy sets out how the Trust will ensure compliance with the Freedom of Information Act (2000) and the Environmental Information Regulations (2004).

2. Introduction

- 2.1. East Kent Hospitals University NHS Foundation Trust (the Trust) will use appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000, Environmental Information Regulations (2004) and associated Codes of Practice.
- 2.2. The Freedom of Information Act 2000 is part of the Government's commitment to greater openness in the public sector, a commitment supported by this Trust. The Act replaces the non-statutory 'Code of Practice on Openness in the NHS.'
- 2.3. The main features of the Act are:
 - 2.3.1. General right of access from 1st January 2005 to information held by public authorities, subject to certain conditions and exemptions;
 - 2.3.2. In cases where information is exempt from disclosure, except where an absolute exemption applies, a duty on public authorities to:
 - 2.3.2.1. Inform the applicant whether they hold the information requested; and
 - 2.3.2.2. Communicate the information;
 - 2.3.2.3. Unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.
 - 2.3.3. A duty on every public authority to adopt and maintain a Publication Scheme;
 - 2.3.4. The Information Commissioner's Office has powers to enforce the rights created by the Act and to promote good practice;
 - 2.3.5. A duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

3. Definitions

None

4. Purpose and Scope

- 4.1. The Policy will provide a framework within which the Trust will ensure compliance with the requirements of the Freedom of Information Act (2000) and the

Environmental Information Regulations (2004). This policy is intended to cover all recorded information held by the Trust.

- 4.2. The Policy will apply to all Trust employees, volunteers and to Non-Executive Directors. It may also apply to staff employed by the Trust on a contractual basis where the requirement will be detailed in the contract/agreement (see Section 5.4).
- 4.3. The Policy will underpin any operational procedures and activities connected with the implementation of the Freedom of Information Act and Environmental Information Regulations.
- 4.4. The Policy supports the principle that the Trust wants to create a climate of openness and dialogue with all stakeholders and hopes improved access to information about the Trust will facilitate this.
- 4.5. The Trust believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence 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 Data Protection Act 2018 and the Access to Health Records Act 1990 and is dealt with in other Trust policies.
- 4.6. The Trust believes that public authorities should be allowed to discharge their functions and 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 (refer to Section 8.2).
- 4.7. The Trust believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this.

5. Duties

5.1. Trust Staff and Non-Executive Directors

- 5.1.1. Ultimate responsibility for Freedom of Information rests with the Chief Executive of the Trust. However, all staff, volunteers and Non-Executive Directors are obliged to adhere to this policy. A failure to adhere to it and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this Policy. They are also responsible for ensuring staff are updated in regard to any changes in it. Staff are also required to keep up to date with their Information Governance mandatory training.

5.1.2. All staff are responsible for ensuring all requests for information are forwarded to the central office. Requests for information under the FOI Act do not have to mention the Act, can be sent by **any** individual or body **anywhere** in the world, and be directed to any member of the Trust's staff. Since a request by email is valid, all staff responsible for dealing with FOI requests must ensure they have their out of office reply activated when away from the office. The out of office reply should include the following:

“If your email is a request under the Freedom of Information Act 2000, please forward this to ekr-tr.foi@nhs.net.”

5.1.3. If requests for information under the FOI Act are received by a member of staff in the Trust, other than the FOI team, these must be forwarded to the FOI team immediately (via ekr-tr.foi@nhs.net). Responses to FOI requests will only be made by the FOI Team.

5.1.4. Requests concerning environmental information do not need to be made in writing. All requests for such information must be immediately forwarded to the Central Office.

5.1.5. A lead, with deputy where appropriate, will be nominated for each major department to be responsible for Freedom of Information matters. They will ensure any requests directed to them by the central office are dealt with promptly in accordance with the timeframes laid out in the Freedom of Information Act 2000. Each department should establish a robust process for ensuring information provided to the central office in response to such requests is accurate and up to date, by seeking appropriate sign off if required.

5.2. **Group Company Secretary**

5.2.1. The Group Company Secretary has overall responsibility for the implementation of this policy, monitoring and reviewing its effectiveness and will act as the Trust's lead for the Freedom of Information Act 2000.

5.3. **Trust Management Team**

5.3.1. The administration of Trust Freedom of Information requests lies with the FOI, Policy and Risk Administrator(s) and is managed by the Policy & FOI Manager.

5.3.2. In facilitating responses to requests, the FOI administrator(s) will ensure they remain up to date with the requirements of the Freedom of Information Act 2000, with assistance from the Group Company Secretary.

5.3.3. The FOI, Policy and Risk Administrator will adhere to the Data Protection Act 2018 by protecting the personal information of both internal staff and that of the requester. Requests will be anonymised prior to sending to FOI Leads to facilitate a reply to ensure a non-biased response. Where information requires redacting

prior to disclosure the FOI, Policy and Risk Administrator will ensure this has been done appropriately, however the responsibility for redacting the information lies primarily with the department that provides the information.

- 5.3.4. The Policy and FOI Manager will present quarterly reports on Freedom of Information activity to the Regulatory Compliance Group.
- 5.3.5. The FOI, Policy and Risk Administrator will ensure that the Communications Department is kept informed of any Freedom of Information requests.
- 5.3.6. The Policy and FOI Manager will use judgement to keep Executive Directors informed of more complex requests or requests linked to current issues faced by the Trust. Executive Director sign off will be sought for all replies to FOI requests.

5.4. **Contractors' Responsibilities**

- 5.4.1. Contractors can have obligations under the Act, by nature of having a contract with a public authority. Contractors have an obligation to assist enquirers, and must forward immediately to the Trust, any written requests for information, pertinent to the Trust, received by them or their staff. These must be sent immediately to the Trust's FOI office. Those making verbal requests should be encouraged to put them in writing, through the Trust's FOI office. For the purposes of the Act, the time allowed for response will commence from when the request is received, in writing, by an officer of the Trust, rather than the contractor. Contracts should, therefore, include a clause setting out the Contractor's obligations in this respect.
- 5.4.2. When entering into contracts the Trust shall not include contractual terms that seek to restrict the disclosure of information held by the Trust (which relate to the contract) beyond the restrictions permitted by the Act. Unless an exemption 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.
- 5.4.3. 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 that clearly identifies information that 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.

- 5.4.4. The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature.
- 5.4.5. It is for the Trust, not the non-public authority contractor, to disclose information pursuant to the Act. The Trust will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor that 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. The Trust will not otherwise impose terms of secrecy on contractors.
- 5.4.6. Officers of the Trust responsible for the management of contractors who are required to support the FOI process under agreement, should ensure the contractor establishes a robust process for providing information to the Central Office in response to such requests. Officers of the Trust are also responsible for ensuring the information provided is accurate and up-to-date, by seeking appropriate sign-off from an Officer of the Trust, if required.

6. General Information

6.1. General Rights of Access

- 6.1.1. Section 1 of the Act gives a general right of access from 1st January 2005 to information held by the Trust, subject to certain conditions and exemptions. Any person making a request for information to the Trust is entitled:
 - 6.1.1.1. To be informed in writing whether the Trust holds the information specified in the request, and
 - 6.1.1.2. If the Trust holds the information to have that information communicated to them.
- 6.1.2. This is 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 from this date.
- 6.1.3. In accordance with 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 describing the information requested.

- 6.1.4. The Trust has established systems and procedures to process applications arising from the general rights of access. A copy of a flowchart entitled “How to deal with an FOI Request” is attached as Appendix A.
- 6.2. **Environmental Information Regulations 2004**
- 6.2.1. The Trust recognises that in addition to the Act, there is also an obligation on public authorities to respond to requests for environmental information under the Environmental Information Regulations (EIR) 2004.
- 6.2.2. The Trust will, as far as possible, respond to requests for environmental information using the same procedures as for responding to Freedom of Information (FOI) requests, while recognising that there are some differing regulations between EIR and FOI on the provision of information. These include rules governing what environmental information may be disclosed (exceptions under EIR) and the requirement to respond to requests for environmental information irrespective of whether the request is in writing or verbal form.
- 6.3. **Protection of Freedoms Act 2012**
- 6.3.1. Section 102 of the Protection of Freedoms Act 2012 adds new provisions to certain sections of the Freedom of Information Act 2000. The new provisions only concern one type of information, namely ‘datasets’; this term is defined in the new section 11(5) of the Freedom of Information Act 2000. The additions are to section 11 (Means by which communication to be made), section 19 (Publication schemes) and section 45 (Secretary of State’s Code of Practice); the term ‘dataset’ has also been added to the list of definitions in section 84.
- 6.3.2. In line with this new provision, the Trust will ensure datasets are made available, either in response to a Freedom of Information Act 2000 request or proactively under a publication scheme, in a way that allows them to be re-used. The Trust will, so far as reasonably practical, ensure the requester is provided the information in a re-usable form and under licensing conditions that permit re-use.

7. Conditions and Exemptions

- 7.1. 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:
- 7.1.1. Reasonably requires further information in order to identify and locate the information requested, and
- 7.1.2. Has informed the applicant of that requirement.
- 7.2. The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

- 7.3. The Trust does not have to comply with the duty to 'confirm or deny' if the information is exempt under the provisions of Part II of the Act. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if 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 B of this Policy. The Trust will seek to use the qualified exemptions sparingly and will justify the use of such exemptions.
- 7.4. The duty to confirm or deny does not arise if a fees notice has been issued 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.
- 7.5. 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 detailed in the 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.
- 7.6. 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 substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the current request. The Trust will log all requests for information for monitoring purposes.

8. Charges and Fees

- 8.1. The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. However, the Trust is permitted to charge reasonable fees to meet some of the costs of providing information. The fee may include:
- 8.1.1. The cost of putting the information into the applicant's request format, e.g. audio, CD, etc.;
 - 8.1.2. Photocopying and printing costs;
 - 8.1.3. Postage and other transmission costs.
- 8.2. The Trust is not obliged to charge a fee in meeting their duties under the Act.
- 8.3. Additionally, the Trust will not charge for putting information into another format if the Trust is under a duty to make information accessible under other legislation relevant to any equalities duties, specifically – ethnicity, disability, religion, age,

sex, gender assignment, sexual orientation, marriage/civil partnership or pregnancy/maternity.

- 8.4. There may be a few cases where the costs of meeting a request under the General Rights of Access would exceed the appropriate limit, which for NHS trusts is set at £450. Where this is the case, the Trust is allowed to refuse to answer the request. The limit is applied first to the Trust's duty to confirm or deny that it holds the information and then its duty to supply the information. Therefore, if it would cost more than £450 to confirm or deny there is no duty to do so.
- 8.5. The Trust is permitted to estimate whether the cost of meeting a particular request would exceed the £450 limit. To do this the Trust will take account of the costs of employing staff to:
 - 8.5.1. Find out whether the information is held;
 - 8.5.2. Locate and retrieve the information;
 - 8.5.3. Extract the information.
 - 8.5.4. (The cost of redacting documents is not within scope of the appropriate limit.)
- 8.6. Requests to the Trust can be aggregated for the purposes of calculating the appropriate limit if:
 - 8.6.1. Requests by one person are for the same or similar information (or by people who seem to be working together);
 - 8.6.2. The subsequent request is received by the public authority within a reasonable interval (sixty days) of the previous request.
- 8.6.3. To estimate these staff costs, the Trust will use an hourly rate of £25 per person per hour. No other costs will be taken into account when making this estimation.
- 8.6.4. 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. Applicants will be required to pay any fees within a period of three months or the request will lapse.

9. Time Limits for Compliance with Requests

- 9.1. The Trust has established systems and procedures to ensure that it complies with the duty to confirm or deny and to provide the information requested within twenty working days in accordance with Section 10 of the Act. All staff and Non-

Executive Directors will be required to comply with these requirements; failure to do so may result in disciplinary action.

- 9.2. On receipt of a request the Trust may need to clarify certain elements of the request and at such a time, in accordance with the terms of the Act, the 20-working day limit will start once the clarification has been received. If clarification has not been received within two months the request will be closed.
- 9.3. If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, 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.
- 9.4. If the Trust chooses to apply an exemption to 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 within twenty working days informing the applicant of this decision.

10. Means by which Information will be Conveyed

- 10.1. When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, the Trust shall so far as reasonably practicable give effect to that preference:
 - 10.1.1. The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant;
 - 10.1.2. The provision to the applicant of a reasonable opportunity to inspect a record containing the information; and
 - 10.1.3. The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.
- 10.2. 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, the Trust will give the reasons for its determination and will provide the information by such means as it deems reasonable in the circumstances.
- 10.3. The Trust will establish systems and procedures to monitor the provision of information arising from requests.

11. Refusal of Requests

- 11.1. As indicated above, the duty to provide the information requested does not arise if the Trust:
 - 11.1.1. Applies an exemption under Part II of the Act (refer to 7);
 - 11.1.2. Has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months (refer to 7.4);
 - 11.1.3. Estimates that the cost of compliance with the request for information exceeds the appropriate limit (refer to 8);
 - 11.1.4. Can demonstrate that the request for information is vexatious or repeated (refer to 7.6).
- 11.2. 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. The applicant will also be informed of the procedures for making a complaint under the Act and of the right conferred by section 50 of the Act.
- 11.3. 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. The notice will:
 - 11.3.1. Specify the exemption in question, and (if that would not otherwise be apparent) why the exemption applies.
 - 11.3.2. Where the Trust at the time when the notice is given to the applicant has not yet reached a decision - 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.
- 11.4. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology. 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. This will be monitored by the FOI Office.
- 11.5. If applying a qualified exemption the Trust will, either in the notice issued under paragraph 11.3 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

- 11.5.1. That, in all the circumstances, 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
- 11.5.2. That, in all circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 11.6. The statement should not involve the disclosure of information, which would itself be exempt information.
- 11.7. 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.
- 11.8. The Trust will keep a record of all notices issued to refuse requests for information.

12. Duty to Provide Advice and Assistance

- 12.1.1. The Trust will ensure that systems and procedures are in place to meet its duty to provide advice and assistance, so far as is reasonable, to persons who propose to make, or have made, requests for information.
- 12.1.2. The Trust will ensure that the systems and procedures deployed to meet the section 16 duty also conform to the Code of Practice issued under the Act.

13. Transferring Requests for Information

- 13.1. A request can only be transferred where the Trust receives a request for information which it does not hold, but which is held by another public authority. If the Trust 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).
- 13.2. Upon receiving the initial request for information, the Trust will always process it in accordance with the Act in respect of such information 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 that it holds itself.

- 13.3. 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:
 - 13.3.1. Contacting the applicant and advising that the information requested may be held by another public authority;
 - 13.3.2. Suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
 - 13.3.3. Providing contact details for that authority.
- 13.4. If the Trust considers it to be more appropriate to transfer the request to another authority in respect of information it does not hold, consultation will take place with the other authority with a view to ascertaining whether it holds the information and, if so, 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:
 - 13.4.1. Whether a transfer is appropriate; and if so
 - 13.4.2. Whether the applicant is likely to have any grounds to object to the transfer.
- 13.5. 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.
- 13.6. Where there are reasonable grounds to believe an applicant is likely to object, the Trust will only transfer the request to another authority with consent. If there is any doubt, the applicant will be contacted to suggest that he or she makes a new request to the other authority.
- 13.7. All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible. Where the Trust is unable either to advise the applicant that it holds, or may hold, the requested information or 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 pursue his or her request.

14. Complaints about the Discharge of the Duties of the Trust under the Act

- 14.1. 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. Refer to Appendix C
- 14.2. The procedure will refer applicants to the right to apply to the Information Commissioner if they remain dissatisfied with the Trust following attempts at local resolution of their complaint.
- 14.3. Correspondence to the requester will provide details of the procedure to following should they be dissatisfied with the handling of their request for information.

15. Publication Scheme

- 15.1. Under Section 19 of the Freedom of Information Act 2000 public authorities have a legal duty to adopt and maintain a Publication Scheme. A Publication Scheme is a complete guide to the information routinely published by a public authority.
- 15.2. The Information Commissioner's Office (ICO) has developed a model publication scheme which public sector organisations are required to adopt from 1 January 2009. The Trust has adopted this scheme in its entirety.
- 15.3. The Trust's Publication Scheme will detail the information that the Trust publishes and intends to publish. 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. It will be available in hard copy on request and through our website.
- 15.4. The Group Company Secretary has overall responsibility for the development and updating of the Trust's publication scheme in line with the requirements of the ICO Model Publication Scheme. This scheme will provide links to information already publicised on the Trust's website.

16. Information Requests - Consultation with Third Parties

- 16.1. The Trust recognises that in some cases the disclosure of information may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 2018 ("the DPA"). Unless an exemption provided for in the Act applies, the Trust will be obliged to disclose that information in response to a request.
- 16.2. Where a disclosure of information cannot be made without the consent of a third party (for example, disclosure of the information without their consent would

constitute an actionable breach of confidence), the Trust will consult them with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because they 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.

- 16.3. Where information constitutes "personal data" within the meaning of the DPA, 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.
- 16.4. The Trust will undertake consultation where:
 - 16.4.1. The views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
 - 16.4.2. The views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.
- 16.5. The Trust may consider that consultation is not appropriate where the cost would be disproportionate. In such cases, the Trust will consider what is the most reasonable course of action. Consultation will be unnecessary where:
 - 16.5.1. It does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
 - 16.5.2. The views of the third party can have no effect on the decision of the Trust, for example, where there is other legislation preventing or requiring the disclosure of this information;
 - 16.5.3. No exemption applies and so under the Act's provisions, the information must be provided.
- 16.6. Where the interests of a number of third parties may be affected by a disclosure, and they have a representative organisation, the Trust may, if it considers consultation appropriate, consider that it would be sufficient to consult that organisation. If there is no representative organisation, the Trust may consider it sufficient to consult a representative sample of those concerned.
- 16.7. The fact that the third party has not responded 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 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.

17. Accepting Information from Third parties

- 17.1. 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.
- 17.2. 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.

18. Policy Development, Approval and Authorisation

- 18.1. This policy will be approved by the Regulatory Compliance Group.
- 18.2. This policy will be ratified by the Policy Authorisation Group.

19. Review and Revision Arrangements

- 19.1. This policy will be reviewed by the Group Company Secretary as scheduled in three years' time unless legislative or other changes necessitate an earlier review.
- 19.2. It will be ratified by the Policy Authorisation Group every three years, or when there are significant changes and/or changes to underpinning legislation in accordance with the policy for the Development and Management of Trust Policies.

20. Policy Implementation

- 20.1. This policy will be distributed by hyperlink to all Trust FOI Leads for reference purposes.
- 20.2. This policy will be available on the Policy Centre, which can be accessed through the Trust intranet.
- 20.3. The policy will be available on the Freedom of Information section of the Trust's website: <https://www.ekhuft.nhs.uk/patients-and-visitors/about-us/freedom-of-information/>

21. Document Control including Archiving Arrangements

- 21.1. This policy conforms to the policy for the Development and Management of Procedural Documents.

- 21.2. Archiving of this policy will conform to the EKHUFT Information Lifecycle policy, which sets out EKHUFT's policy on the management of its information.
- 21.3. This policy will be uploaded to the Trust's policy management system.

22. Monitoring Compliance

- 22.1. The Group Company Secretary has overall responsibility for the implementation of the Freedom of Information Act and this policy.
- 22.2. The Group Company Secretary will facilitate awareness of the Freedom of Information Act to members of staff.
- 22.3. The Policy & FOI Manager will present quarterly activity reports to the Regulatory Compliance Group.
- 22.4. A report will be produced annually by the Policy & FOI Manager and Risk Manager and presented to the Integrated Audit and Governance Committee to demonstrate compliance with the Freedom of Information Act 2000.
- 22.5. Compliance metrics will be published quarterly on the Trust's website as required by the Information Commissioner's Office.

23. References

Data Protection Act 2018

Access to Health Records Act 1990

Freedom of Information Act 2000

Freedom of Information Code of Practice

Environmental Information Regulations 2004

Records Management: NHS Code of Practice

Lord Chancellor's [Code of Practice](#) on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act.

Lord Chancellor's Code of Practice on the Management of Records Under section 46 of the Freedom of Information Act 2000.

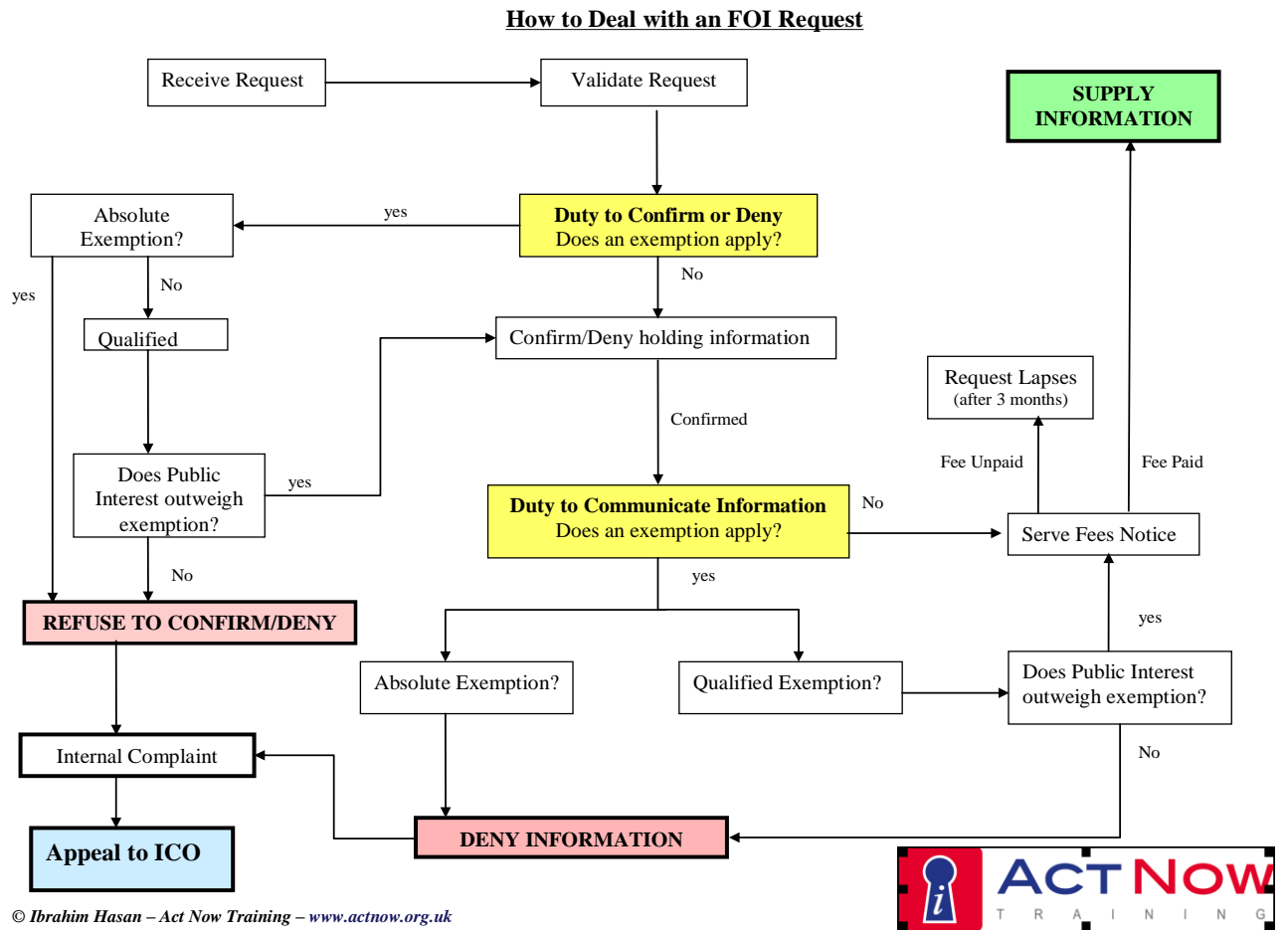
Ministry of Justice - <http://www.gov.uk/government/organisations/ministry-of-justice>

Information Commissioners Office: <http://www.ico.org.uk>

Secretary of State's Code of Practice (datasets) on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 (issued under Section 45 of the Freedom of Information Act)

24. Appendices

Appendix A – Flowchart – How to Deal with an FOI Request



Appendix B – Exempt Information 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.
- 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 the 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
- **Section 40**, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- **Section 41**, Information provided in confidence
- **Section 44**, Prohibitions on disclosure

The exemptions that are qualified by the public interest are:

- **Section 22**, Information intended for future publication
- **Section 24**, National security
- **Section 26**, Defence
- **Section 27**, International relations
- **Section 28**, Relations within the United Kingdom
- **Section 29**, The economy
- **Section 30**, Investigations and proceedings conducted by public authorities
- **Section 31**, Law enforcement
- **Section 33**, Audit functions
- **Section 35**, Formulation of Government policy
- **Section 36**, Prejudice to effective conduct of public affairs

- **Section 37**, Communications with Her Majesty, etc, and honours
- **Section 38**, Health and safety
- **Section 39**, Environmental information
- **Section 42**, Legal professional privilege
- **Section 43(1)**, Trade Secrets
- **Section 43(2)**, Commercial interests

More information on the exemptions can be found on the Information Commissioners website at http://www.ico.gov.uk/home/what_we_cover/freedom_of_information

Appendix C – Complaints Procedure

Introduction

Part VI of the Section 45 Code of Practice requires public authorities subject to the Freedom of Information Act 2000 to set up specific procedures to allow an applicant, who is dissatisfied in any way with a decision taken by the organisation on the provision of information, to require internal review of decisions taken.

This sets out the procedure to be followed by the East Kent Hospitals University NHS Foundation Trust where an applicant is dissatisfied with how their request under the Freedom of Information Act has been dealt with.

A requirement for review can arise in a number of circumstances including (but not limited to):

- (a) where we indicate that we do not hold the information, but the applicant believes we do; or
- (b) where the applicant feels that we have not provided the advice and assistance we should have done; or
- (c) where the applicant feels that exemptions have been wrongly applied; or
- (d) where we have failed to supply the information requested or failed to reply within the 20 working days limit; or
- (e) where the applicant feels the charge for providing the information is higher than it should be.

If the applicant is dissatisfied in any way he/she can require the Trust to review the way the request was handled or the decision reached.

Submission of Requirement for Review

The Group Company Secretary will establish a process for informing applicants of the process to follow should they be dissatisfied with the Trust's response to a request for information. This procedure applies to:

- (a) any written reply from an applicant expressing dissatisfaction with the Trust's response to a request for information; and/or
- (b) any written communication from a person who considers that the Trust is not complying with its publication scheme.

Requests must be made in writing (email or other electronic means) and include a return address for the Trust to send their response. A brief statement explaining why the applicant feels aggrieved at the decision taken by the Trust should accompany any request for review.

Requests for internal review must be addressed to:

Group Company Secretary
East Kent Hospitals NHS Trust
Kent and Canterbury Hospital
Ethelbert Road, Canterbury, CT1 3NG
E-mail: ekh-tr.foi@nhs.net

The Group Company Secretary will receive the request for review and take the necessary action.

Review Procedure

Part VI of the Section 45 Code of Practice states that internal reviews should be dealt with in a reasonable timeframe. The Information Commissioner's view is that a reasonable time for completing an internal review is **20 working days** from the date of the request for review and only exceptional cases should take longer. The Information Commissioner considers that no case should take longer than 40 working days.

The review procedure is to be accessible, prompt, fair and impartial. It may result in a different decision to that originally taken being made and will be binding on the organisation.

The Trust will therefore adopt the following procedure for dealing with requests for an internal review:

1. The FOI, Policy and Risk Administrator will:
 - (a) acknowledge its receipt within 3 working days and state that it is Trust policy to respond to internal reviews within **20 working days**.
 - (b) If it becomes clear at any stage of the internal review that the Trust will not be able to meet the deadline, the applicant will be advised accordingly. An extension of the 20 working day deadline should be for exceptional circumstances and the applicant will be kept fully informed throughout the internal review process. The Trust will ensure the timeframe for responding does not exceed **40 working days**.
2. The FOI, Policy and Risk Administrator will send
 - (a) the request, together with
 - (b) any comments on the original decision to the **provider of the original information and Executive Director** who has overall responsibility for the information provided.
3. The **provider of the original information and Executive Director** shall be asked to review the documentation received and (in consultation with such persons as he/she feels appropriate) consider the request for review.

4. This information shall then be presented to the **Group Company Secretary** or their independent nominated Executive Director to review and reach a decision on that request within the timeframe advised by the FOI, Policy and Risk Administrator. The response will be either to uphold the initial response provided or make recommendations of the information that should be delivered to the applicant. The **Group Company Secretary** shall notify his/her decision and the reason for that decision in writing.
5. The **FOI, Policy and Risk Administrator**, shall then ensure that:-
 - (a) the decision is conveyed in writing to the applicant within **20 Working Days** or, for exceptional circumstances (refer to 1(b)) the timescale communicated to the applicant which should not exceed **40 Working Days**.
 - (b) if the applicant has been unfairly treated, an apology is offered on behalf of the organisation:
 - (c) any remedial action (e.g. provision of information requested where appropriate) is sent to the applicant without delay so as to be received within the 20-day timescale for reviewing the request.
 - (d) The applicant is advised of his/her right to raise the matter further with the Information Commissioner if he/she remains dissatisfied with the decision of the organisation. In advising of this right, the applicant should be given details of the contact address and e-mail address of the commissioner at:-

Information Commissioner's Office
Freedom of Information
Wycliffe House
Water Lane, Wilmslow, Cheshire, SK9 5AF

E-mail mail@ico.gsi.gov.uk
 - (e) procedures are reviewed so that the organisation learns from the decisions reached on review.

N.B. Where the request for review relates to a decision by the Chief Executive exercising personal responsibility to withhold information as 'Prejudicial to the Effective Conduct of Public Affairs' (Section 36 FOI Act) the applicant must be advised promptly that he / she should raise the matter directly with the Information Commissioner, as this cannot be handled by the Trust's FOI Complaints Procedure.

Assistance to Applicants

Under the spirit of the Freedom of Information Act 2000 the Trust will provide assistance, if required, to any applicant who seeks it. It will also ensure that the needs of persons with a disability within the terms of the Disability Discrimination Act 1995 are not unfairly disadvantaged as a consequence of the procedure described above and shall make appropriate adjustments to the procedure where appropriate under the terms of this Act.

Appendix D – Equality Analysis

An Equality Analysis not just about addressing discrimination or adverse impact; the policy should also positively promote equal opportunities, improved access, participation in public life and good relations.

Person completing the Analysis		
Job title	Policy & FOI Manager	
Care Group / Department	Trust Management	
Date completed	27 June 2022	
Who will be impacted by this policy?	<input checked="" type="checkbox"/> Staff (EKHUFT) <input checked="" type="checkbox"/> Staff (Other) <input type="checkbox"/> Service Users	<input type="checkbox"/> Carers <input type="checkbox"/> Patients <input type="checkbox"/> Relatives

Assess the impact of the policy on people with different protected characteristics.

When assessing impact, make it clear who will be impacted within the protected characteristic category. For example, it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Characteristic Group	Impact of decision Positive/Neutral/Negative
e.g. Sex	Women Men	Positive Neutral
Age	None	Neutral
Disability (please see additional information below)	None	Neutral
Gender reassignment	None	Neutral
Marriage and civil partnership	None	Neutral
Pregnancy and maternity	None	Neutral
Race	None	Neutral
Religion or belief	None	Neutral
Sex	None	Neutral
Sexual orientation	None	Neutral

If there is insufficient evidence to make a decision about the impact of the policy it may be necessary to consult with members of protected characteristic groups to establish how best to meet their needs or to overcome barriers.

Has there been specific consultation on this policy?	No
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Did the consultation analysis reveal any difference in views across the protected characteristics?	Not applicable
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Disability Protected Characteristic

We need to ensure that we meet the Accessible Information Standard (AIS) which aims to support people with a disability, sensory loss or impairment to receive information they can understand and any communication support they need. For more information:
<https://www.ekhuft.nhs.uk/staff/clinical/accessible-information-standard-ais/>
<https://www.england.nhs.uk/ourwork/patients/accessibleinfo/>

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	
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Conclusion: Advise on the overall equality implications that should be taken into account by the policy approving committee.	
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Appendix E – Policy Implementation Plan

To be completed for each version of policy submitted for approval.

Policy Title:	Freedom of Information Act 2000 and Environmental Information Regulations 2004 Policy
Version Number:	7.0
Implementation Lead:	Policy & FOI Manager

Staff Groups affected by policy:	All Corporate and Care Groups
Subsidiary Companies affected by policy:	All who hold information on behalf of the Trust
Detail changes to current processes or practice:	Responsibility for redaction sits with the person(s) providing the information; FOI Team to check completeness of redaction. NO other changes to process.
Specify any training requirements:	No specific training required
How will policy changes be communicated to staff groups/ subsidiary companies?	Link to policy to be sent to all FOI Leads (last reviewed September/October 2022) and Execs with reminder to ensure FOI email address is included in out of office replies (to be cascaded).