# EAST KENT HOSPITALS NHS FOUNDATION TRUST

# FREEDOM OF INFORMATION ACT 2000

## 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 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 Trust 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 (fax, 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:

Currently this is: Louise Riley
Trust Secretary
East Kent Hospitals NHS Trust
Kent and Canterbury Hospital
Ethelbert Road, Canterbury, CT1 3NG
E-mail: foi.recordsoffice@ekht.nhs.uk

The Trust Secretary or in his/her absence, the Assistant Trust 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 Trust Secretary or in his/her absence, the Assistant Trust Secretary will:-

   (a) acknowledge its receipt within 2 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 day 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 Trust Secretary or in his/her absence, the Assistant Trust Secretary will send:-

   (a) the request, together with

   (b) any comments on the original decision to the **Executive Director** who has overall responsibility for the information provided.

3. The **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 and reach a decision on that request within the timeframe advised by the Trust

Secretary or in his/her absence, the Assistant Trust Secretary. The **Executive Director** shall notify his/her decision and the reason for that decision in writing.

4. the **Trust Secretary** or in his or her absence, **The Assistant Trust Secretary,** 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 his 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.

Prepared on behalf of Louise Riley, Trust Secretary
by Sarah Fennell, Assistant Trust Secretary

**April 2010**