

*Trust Policy and Procedure*

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Freedom of Information Policy

<b>For use in:</b>	<b>All Trust Areas</b>
<b>For use by:</b>	<b>All Trust Staff</b>
<b>For use for:</b>	<b>Response to Freedom of Information Act</b>
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**Purpose of this Document**

The Freedom of Information Policy sets out what the Trust intends to do to ensure compliance with the Freedom of Information Act 2000, which enables members of the public to question the decisions of public authorities more closely and to ensure that services are provided efficiently and properly delivered. The Act replaces the non-statutory *Code of Practice on Openness in the NHS*.

**Aims**

To set out Trust Policy for responding to requests for information under the Freedom of Information Act, to provide the response efficiently and effectively and to support staff in carrying out compliance.

## **WEST SUFFOLK HOSPITALS NHS TRUST**

### **FREEDOM OF INFORMATION POLICY**

#### **1. INTRODUCTION**

##### **1.1 Parts of the Act**

The Freedom of Information Act 2000 consists of three parts:

**Part I – General Rights of Access** whereby from 1<sup>st</sup> January 2005 the public will have rights of access to all recorded information, subject to certain conditions and exemptions.

**Part II – Publication Scheme** whereby the Trust undertakes to routinely provide information either through its web-site or by publication. This includes Trust Board minutes, the Annual Report, policies. Since November 2003 every NHS organisation has had a duty to adopt and maintain a Publication Scheme. The one for West Suffolk is published on the web site.

**Part III – Exemptions** whereby the Trust may refuse to provide information on a relatively small number of exemptions, primarily to do with the duties and responsibilities of the Data Protection Act. Further exemptions are for the Secretary of State alone.

The Information Commissioner will enforce the rights created by the Act, supported by a Information Tribunal.

##### **1.2 Scope**

The Freedom of Information Act Policy will:

- Apply to all Trust employees and to non-Executive Directors
- Provide a framework within which the Trust will ensure compliance with the requirements of the Act
- Underpin the operational procedures and activities required to implement the Act

##### **1.3 Principles**

The Trust:

- Supports the principle that openness should be the norm in public life and wants to create a climate of openness and dialogue with all stakeholders
- 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 within the Data Protection Act 1998 as covered in other Trust policies

- Will apply exemptions where it considers that these support effective discharge of its functions and will balance them against the public right of disclosure
- 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 knowledge
- Believes that common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other Trust policies and procedures.

## **2. FREEDOM OF INFORMATION ACT 2000 POLICY**

### **2.1 Policy Statement**

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.

### **2.2 Publication Scheme**

The Trust will maintain and update a Publication Scheme in conformance with NHS requirements. The Scheme will detail information that the Trust publishes at this point in time and intends to publish in the future. It will describe the format in which the information is available and whether or not a charge will be made for the information.

The Publication Scheme will be available in hard copy on request or through the Trust web site. It will be subject to regular review and in terms of content and will be formally reviewed by the Information Commissioner in 2007.

Applications for information listed in the Publication Scheme must be received in writing.

### **2.3 General Rights of Access**

The Trust will support the general right of access to recorded information from 1<sup>st</sup> January 2005, subject to certain conditions and exemptions. This right of access is fully retrospective.

A request for information must be in writing, stating the name of the applicant and an address for correspondence, and describe the information requested. It may be received in paper or electronic form.

The Trust will 'confirm or deny' whether it has the information required. Any person making a written request for information will be entitled to:

- Written confirmation as to whether the Trust holds the information as described in the request
- Have the information communicated to them.

### **2.4 Exemptions**

The duty to confirm or deny is subject to certain conditions and exemptions. A full list of exemptions is contained within the Act. In summary the duty does not arise where the Trust

- a. Reasonably requires further information in order to find the information and informs the applicant accordingly
- b. Has issued a fees notice has been issued to the applicant and the fee has not been paid within 3 months
- c. 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 but reserves the right to either a) refuse or b) charge for the communication of information that exceeds this limit
- d. Considers that a request for information is vexatious, for instance an identical or similar request to one already satisfied.
- e. Is entitled to an absolute or qualified exemption under the Act. The Trust will seek to use the qualified exemptions sparingly and will justify the use of such exemptions.

## **2.5 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 copies onto media such as CD-ROM.

For general rights of access under the Act the Trust will follow the national Fees Regulations when they are available.

In all cases where the Trust chooses to levy a fee the applicant will receive a fees notice. Applicants will be required to pay all fees within 3 months of the day on which the fees notice was given to the applicant.

## **2.6 Time Limits for Compliance with Requests**

The Trust will establish systems and procedures to:

- Ensure compliance with the duty to confirm or deny and to provide the information requested within 20 working days of receipt of the request
- Ensure despatch of the requested information within 20 working days of the receipt of a fee where this has been requested
- Inform the applicant where it arises of the Trust's decision to apply an exemption to information request or to refuse a request on grounds of vexation or excessive costs within 20 working days.

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

Information will be provided to applicants by any one or more of the following means:

- a. A copy of the information in permanent form or another form acceptable to the applicant
- b. Provision of a reasonable opportunity to inspect a record containing information
- c. Provision of a digest or summary of the information in permanent form or another form acceptable to the applicant.

The Trust will as far as reasonably practicable give effect to the applicant's preference but reserves the right to consider all the circumstances including the cost of doing so. The Trust will notify the applicant of its reasons for its determination.

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

## **2.8 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. The Trust will confirm to the Code of Practice issued under Section 45 of the Act.

## **2.9 Transferring Requests for Information**

The Trust will only transfer an information request where it concerns a request for information it does not hold, but contains information which may be held by another public authority. If the Trust holds some of the information, transfer of the request will only cover those parts of the information it does not hold.

Upon receiving the request the Trust will process it in accordance with the Act in respect of the information it holds and advise the applicant in respect of the outstanding information. The Trust will follow the provisions of the Act in providing appropriate support to the applicant. For example if the Trust believes that another public authority holds the information it will consider what would be most helpful to the applicant in furthering their request eg providing contact details for the other authority.

All transfers of requests will take place as soon as is practicable and the applicant will be informed as soon as this has been done.

## **2.10 Consultation with Third Parties**

The Trust recognises that in some cases disclosure of information may affect the legal rights of another party eg where it affects the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998. Where a lawful disclosure cannot be made without the consent of a third party the Trust will seek the consent of the third party and/or undertake consultation where the views of the third party may assist in determining:

- Whether there is an exemption or not

- Where the public interest lies under Section 2 of the Act.

In accordance with the Act there may be some cases where consultation is not appropriate eg the cost of consulting is disproportionate, or exemption is being sought on other grounds.

Where consultation is appropriate and the third party has a representative organisation, the Trust will consider if consultation with the representative organisation is sufficient to meet the needs of the case or in some cases a representative sample of the third parties in question.

The Trust recognises that if the third party does not respond to consultation this does not relieve the Trust of its duty to disclose information under the Act within the specified time set out under the Act.

## **2.11 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 will ensure that this provision is included in contract documentation. Unless an exemption provided for under the Act is applicable the Trust will be obliged to disclose information relating to a request regardless of the terms of any contract.

As recommended by the Lord Chancellor's Department the Trust will reject non-disclosure clauses. Where exceptionally it becomes necessary to include non-disclosure provisions within the contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract, which clearly identifies the information not to be disclosed.

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

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

The Trust will only accept information from third parties in confidence if it is necessary to obtain the information in connection with the exercise of the Trust's functions and it would not otherwise be provided. Acceptance of any confidentiality provisions will be for a good reason, capable of being justified to the Information Commissioner.

## **2.13 Complaints about Discharge of Duties under the Act**

The Trust will implement a procedure for dealing with complaints about the discharge of the duties of the Trust under the Act. The procedure will refer applicants to section 50 of the Act to apply to the Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

## **2.14 Records Management**

The Trust has a separate policy for Records Management and will update it in accordance with the Freedom of Information Act.

The Trust intends to make as many as possible of the Publication Scheme documents available electronically on the Trust web site.

Under the Records Management Strategy the Trust will seek to make record keeping as efficient as possible and to utilise modern methods of storage and retrieval for paper and electronic records and documents.

The Records Management Policy and associated procedures addresses issues regarding creation, storage, retrieval, maintenance and disposal of records.

### **3. IMPLEMENTATION**

All staff and non-executive Directors will adhere to this policy.

Managers at all levels will be responsible for ensuring that their staff are aware of and adhere to this policy and any future updates.

The Trust will set up a single point of contact (the FoI lead) to receive all requests for information. This function will routinely inform the Trust Communications function and Directorates affected by individual requests of the arrival of a request and ask for appropriate action.

An Operational Manual will support timely treatment of a request from initial receipt to closure.

Public information eg policies will be kept up-to-date with internal information.

### **4. STAFF TRAINING AND SUPPORT**

The Information Governance Officer will work Trust-wide with all staff groups to carry out training, awareness, compliance and reporting. Staff will be made aware of key actions and timescales.

Support will be provided for individual Freedom of Information queries for the point of contact function and staff as a whole.

The Information Governance Officer will also ensure that the Trust has up-to-date knowledge of the Act and the Code of Practice.

The Trust will support standardisation of Trust documents eg minutes and will support this by training. The Trust will focus on corporate committees and groups in the first instance.

### **5. MONITORING**

The Trust will employ a range of methods for monitoring compliance, which will include use of a tracking database to monitor treatment and timeliness of request fulfilment.

The Trust will assess its compliance of Freedom of Information using the Information Governance Toolkit and report appropriately to the NHS Executive.

## 6. REPORTING

The Information Governance Steering Group will receive reports on operation of the Policy, types of information requests and any problems.

Freedom of Information will form part of the quarterly report on Information Governance to the Organisational Risk Committee and the annual report to the NHS Information Authority which contributes to the Trust's star rating.

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APPENDIX ONE – SUMMARY OF KEY ACTIONS AND TIMESCALES

Stage	Key Action	Timescale	Who?
Initial Application	<b>Details of enquiry to Fol Lead by fax or e-mail. Original documentation also sent to Fol Lead (See below for contact details).</b>	<b>1 working day.</b>	<b>Recipient of request.</b>
Processing Request			
<b>On Receipt</b>	<b>Acknowledge receipt of request to applicant.</b>	<b>2 working days.</b>	<b>Fol Lead</b>
<b>Accessing information</b>	<b>Identification of person(s) holding relevant information.</b>	<b>2 working days.</b>	<b>Fol Lead</b>
	<b>Locate and provide relevant information to Fol Lead.</b>	<b>5 working days.</b>	<b>Staff</b>
	<i><b>Note: Timescale suspended if insufficient information provided by applicant to identify and locate information requested.</b></i> <b>Additional time granted if information difficult to retrieve.</b>	<b>5 working days.</b>	<b>Fol Lead</b>
<b>Accessing Information (cont.)</b>	<b>Information reviewed in respect of fees/charges and exemptions.</b>  <i><b>If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The twenty working day timescale is suspended until the fee/charge is paid.</b></i>	<b>2 working days.</b>	<b>Fol Lead</b>
Providing Information	<b>Information provided to applicant.</b>	<b>3 working days.</b>	<b>Fol Lead</b>