

# Trust-wide Policy

## For

### Freedom of Information

#### A document recommended for use

**In:** All areas

**By:** All staff

**For:** Ensuring compliance with the Freedom of Information Act and associated legislation and to ensure that the Trust remains open and accountable to the public.

**Key Words:** Freedom of Information, FOI, Information Request, Data Protection, Disclosure, Confidentiality, GDPR

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#### Trust Ratification:

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Version	Date	Comment
1	December 2004	Reviewed and approved by the Board
2	July 2010	Reviewed
3	March 2012	Scheduled review
4	January 2013	Scheduled review
5	February 2016	Scheduled review
6	June 2018	Updated in relation to General Data Protection Regulation only – full review to take place by end of 2018.
7	April 2019	Scheduled review. No material changes – personnel and minor wording changes made. Key messages also updated.

### Equality Impact Assessment

This document has been reviewed in line with the Trust's Equality Impact Assessment guidance and no detriment was identified. This policy applies to all regardless of protected characteristic - age, sex, disability, gender-re-assignment, race, religion/belief, sexual orientation, marriage/civil partnership and pregnancy and maternity.

### Dissemination and Access

This document can only be considered valid when viewed via the East & North Hertfordshire NHS Trust Knowledge Centre. If this document is printed in hard copy, or saved at another location, you must check that it matches the version on the Knowledge Centre.

### Associated Documentation

None

### Review

This document will be reviewed within three years of issue, or sooner in light of new evidence.

### Key Messages

- As a public body we are accountable to the public
- A key value of the Trust is to be open and honest
- It is a legal requirement for the Trust to comply with the FOI Act 2000, including the requirement to respond to FOI requests as promptly as possible and within a maximum of 20 working days.
- Certain types of information are exempt from disclosure under the FOI Act 2000. The FOI team will decide on the application of any exemptions.
- Final FOI responses are sent by the FOI team. Individuals providing information to inform the response **must not** reply directly to the requestor.

## 1. INTRODUCTION

The Freedom of Information Act 2000 (FOIA) came into force at the beginning of 2005 and deals with access to all information held by public authorities. The Act gives people the right to request information from public authorities and is intended to support a culture of openness and transparency across the public sector.

Members of the public can make requests for information held by the Trust recorded in any form. Requests must be made in writing (including by email) and give the requestor's name. The Trust must respond to all requests within 20 working days.

As well as requiring public bodies to respond to requests for information the Act also requires all public authorities to have an approved publication scheme signposting people to

information that is proactively published and shared with the public. Finally the Act places a duty on the Trust and all public authorities to help members of the public to make a Freedom of Information request.

## 2. SCOPE

This policy applies to all Freedom of Information requests made to East and North Hertfordshire NHS Trust

## 3. PURPOSE

The policy aims to ensure full compliance with the Freedom of Information Act 2000 and to promote a culture of openness and transparency in line with the Trust's values.

## 4. DEFINITIONS

Freedom of Information Act: The Act that gave members of the public the right to ask for and receive information about public bodies.

Freedom of Information Request: A request made for information held by the Trust. The request does not have to state that it is making a Freedom of Information request.

Requestor: The person making a request. This may be an interested member of the public, a commercial body, journalist or MP. We are obliged to disclose information regardless of who has requested it.

## 5. DUTIES

The Chief Executive has the ultimate responsibility for the Trust's compliance with the Act and has delegated responsibility for this to the Associate Director of Corporate Governance who acts as the Freedom of Information Lead. The Chief Executive will act as the qualified person when the Trust considers making information exempt under section 36 (prejudice to effective conduct of public affairs).

The Associate Director of Corporate Governance acts as the Freedom of Information Lead and ensures that organisational procedures and processes are in place to comply with the FOIA and to report this to the Board via the Quality and Safety Committee.

The Freedom of Information Officer role is carried out by the Trust Secretary who manages the FOI processes and supports staff with the support from the FOI co-ordinator (currently the Corporate Governance Officer).

Directors and Heads of Service need to all be aware that any information created may be requested under the Freedom of Information Act and should ensure that all staff in their teams are aware of their duties to comply with the FOIA. The FOI Officer and FOI co-ordinator will be pleased to meet with departmental leads to offer support and guidance and if required will attend divisional meetings to raise awareness of Freedom of Information.

All Trust staff need to familiarise themselves with this policy and to comply with requests for information from the FOI team. Divisions and departments are advised to identify a lead who will co-ordinate their FOI responses.

Further details of the roles and oversight arrangements are set out in **appendix 1**.

## 6. PUBLICATION SCHEME

Under the Freedom of Information Act 2000, every public authority has a duty to specify what information they publish, how the information is made available, and whether it is available for free or if there is a charge. East and North Hertfordshire NHS Trust's Publication Scheme explains what information the Trust makes available to the public. Wherever possible, we aim to make it easy for information to be obtained. We review the scheme at regular intervals and monitor how it is operating.

The publication scheme can be accessed from the following page of the Trust website:  
<https://www.enherts-tr.nhs.uk/about-the-trust/freedom-of-information/>

## 7. PROCEDURE FOR RESPONDING TO A FOI REQUEST.

Members of the public are invited to direct FOI requests to [foi.enh-tr@nhs.net](mailto:foi.enh-tr@nhs.net) or via post to

Freedom of Information Officer (L70)  
East and North Hertfordshire NHS Trust  
Lister Hospital  
Coreys Mill Lane  
Stevenage  
Herts  
SG1 4AB

Once a response has been received it must be answered within 20 working days. As some FOI requests may be directed elsewhere in the organisation it is vital that all staff forward FOI requests to the FOI team immediately.

The FOI Co-ordinator (Corporate Governance Officer) logs all requests and directs them to the most appropriate division or department to obtain the required information. Once this information has been received the FOI Co-ordinator will draft a response and consider whether any exemptions apply. The response and rationale for applying any exemptions will be reviewed by the FOI Officer (Trust Secretary) and the response will be sent to the requestor within 20 working days.

The information provided may need to be clarified or set into context before the response is sent so it is important that all divisions and departments respond promptly and within the deadline set by the FOI co-ordinator.

Section 102 of the Protection of Freedoms Act 2012 amended sections 11 and 12 of the FOIA giving rights to receive data in a reusable format (such as an excel spreadsheet), often referred to as datasets. The Trust will comply with this where possible and will publish the requested datasets where appropriate. This does not give additional rights to information but does allow members of the public to re-use information.

A diagram showing the process followed is set out as **appendix 2**.

## 8. EXEMPT INFORMATION

The starting point for all responses is to respond fully and openly. However, there are some types of information that the FOIA considers to be exempt from disclosure. There are 23 exemptions which all fall into two categories

Qualified exemptions: Even if the information qualifies for one of these forms of exemption (such as commercial interests) then once it has been shown that it falls into that category of

exemption the Trust must consider the public interest test (whether it would be more in the public interests to disclose the information than to withhold it).

Absolute exemptions: If the information qualifies for one of these forms of exemption then it will not be released and does not need to be subject to the public interest test.

In many cases some of the information requested will be suitable for disclosure so divisions and departments are asked to respond to the FOI team in full. If a division or department believes that an exemption applies they are welcome to make the FOI co-ordinator aware of this at the earliest opportunity so that the FOI team can decide on the correct course of action. The FOI Co-ordinator and FOI Officer consider whether exemptions apply and will apply the public interest test if necessary.

Please note that only the FOI team may determine whether an exemption applies so it is important to respond in full to the request as soon as possible to allow time for them to consider the exemptions.

## **9. VEXATIOUS AND MANIFESTLY UNREASONABLE REQUESTS**

In exceptional circumstances if the Trust believes that it has received a vexatious or manifestly unreasonable request then the FOI team will consider the Information Commissioner's Office guidance on these and will act accordingly. Divisions and departments are asked to continue gathering the information to meet any requests that they feel may fall into this category unless they are advised not to by the FOI team.

Circular (Round Robin) requests will be considered in line with the Information Commissioner's latest guidance on circular requests and if required guidance on vexatious requests and manifestly unreasonable requests.

## **10. COSTS AND STAFF TIME IN RESPONDING TO A REQUEST**

The Trust does not need to respond to a request where to do so would cost more than £450 (the appropriate limit set by the FOIA). Staff time is calculated as £25 per hour (regardless of actual salary), this equates to 18 hours of staff time. The costs that can be taken into account are limited to those that an authority reasonably expects to incur in:

- Determining whether it holds the information requested
- Locating the information or documents containing the information
- Retrieving the information or documents
- Extracting the information (including time spent redacting the information).

No other costs or staff time can be taken into account (such as time spent considering exemptions or taking legal advice)

Where the cost of responding in full would exceed £450 the Trust has a duty to help the requestor identify the aspects of the request that can be responded to within the time limit.

The Trust may charge the requestor for printing and postage costs where the cost to the Trust would exceed £10. Printing and photocopying will be charged at 10p per page and would not apply unless the requestor has asked for the response to be sent in hard copy.

## **11. COMPLAINTS AND APPEALS**

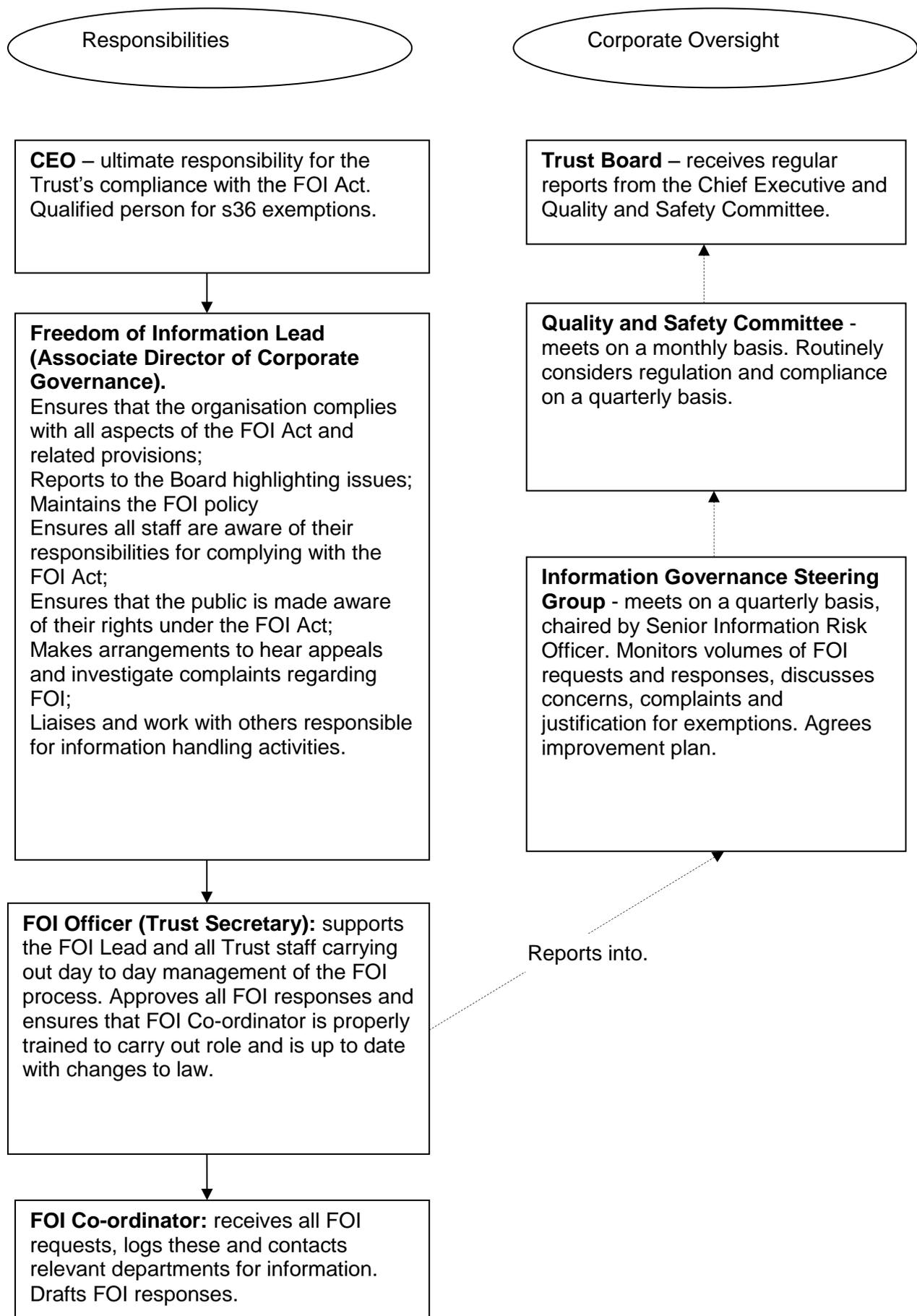
If a requestor is not satisfied with the Trust's response they can ask for an internal review. The FOI Lead (Associate Director of Corporate Governance) will arrange for the review to be carried out and will communicate the outcome of this to the requestor. Internal Reviews will usually be carried out by the FOI Lead and a senior manager who was not involved with the original response (usually the Senior Information Risk Officer or a Director). The Information Commissioner's Office can also consider whether the Trust has complied with the FOIA and can publish decision or enforcement notices and order the Trust to pay costs.

## **12. MONITORING COMPLIANCE**

The FOI Officer will carry out an annual review which will include the number of requests received and timeliness of responses. This will be reported to the Information Governance Steering Group. Updates will be given throughout the year to make the group aware of any concerns or cases that have been internally reviewed. Any improvement action plans will be approved by the group.

Compliance will also be monitored as part of the Data Security and Protection Toolkit submissions and a decrease in compliance will be discussed with the Information Governance Steering Group. The Information Governance Steering Group reports to the Quality and Safety Committee and will highlight any concerns to the Board through the Quality and Safety Committee.

## Appendix 1 Roles and Responsibilities



## Appendix 2 FOI Process

