

Policy Document Control Page

Title

Title: Freedom of Information Policy

Version: 5

Reference Number: CO27

Keywords

Freedom of Information, Re-Use of Public Sector Information, Environmental Information

Supersedes

Supersedes: Version 4

Description of Amendment(s):

- Substantial rewrite
- Remove Round Robin process as no longer supported by NHS Trust Development Authority

Important Notice

From May 2018 the UK will be adopting the European General Data Protection Regulations. These regulations will be replacing the Data Protection Act 1998. In the UK we are still awaiting some health sector specific guidance and instruction regarding GDPR, and as such have deemed that, unless there is a legal requirement or a fundamental change that is required in a policy, all policies, regardless of review date, shall remain current, valid and must be followed for the foreseeable future, to be reviewed prior to the implementation of GDPR from May 2018. Any queries in relation to this statement should be directed to the Trust Information Governance Manager.

Originator

Originated By: Sarah Browne

Designation: Senior Information Governance and Risk Officer

Equality Impact Assessment (EIA) Process

Equality Relevance Assessment Undertaken by: Jonathan Mayes

ERA undertaken on: 2nd March 2012

ERA approved by EIA Work group on: 23rd April 2012

Reviewed as appropriate: Sarah Browne, Senior Information Governance and Risk Officer on 19th January 2016

Where policy deemed relevant to equality-

EIA undertaken by N/A

EIA undertaken on N/A

EIA approved by EIA work group on N/A

Approval and Ratification

Referred for approval by: Sarah Browne

Date of Referral: 19/01/2016

Approved by: Information Governance Assurance Group

Approval Date: 27/01/2016

Date Ratified by Executive Directors : 15th February 2016

Executive Director Lead: Director of Finance

Circulation

Issue Date: 17th February 2016

Circulated by: Performance and Information

Issued to: An e-copy of this policy is sent to all wards and departments

Policy to be uploaded to the Trust's External Website? YES

Review

Review Date: 27th January 2018

Responsibility of: Sarah Browne

Designation: Senior Information Governance and Risk Officer

This policy is to be disseminated to all relevant staff.

This policy must be posted on the Intranet.

Date Posted: 17th February 2016

CONTENTS

1	BACKGROUND.....	4
2	INTRODUCTION	4
3	AIMS AND SCOPE OF THE POLICY	4
4	RESPONSIBILITIES.....	5
5	RELATED DOCUMENTS	6
6	POLICY REVIEW	6
7	“BUSINESS AS USUAL” REQUESTS FOR INFORMATION	7
8	PUBLICATION SCHEME	7
9	FOI REQUESTS	8
10	REFUSING FOI REQUESTS.....	9
11	OPERATING PROCEDURES	10
12	REPORTING.....	10
13	TRAINING.....	10
14	DISCLOSURE OF SENSITIVE INFORMATION.....	11
15	THIRD PARTIES, CONTRACTS, AND CONFIDENTIALITY CLAUSES	12
16	REUSE OF INFORMATION	12
	APPENDIX 1 – METHODS OF CONTACT	13
	APPENDIX 2 – EXEMPTIONS.....	14

1 BACKGROUND

- 1.1 The Freedom of Information Act was passed in 2000 and replaces the Open Government Code of Practice that had been in place since 1994. The Act gives the public a general right of access to recorded information held by public authorities. The Act came into full effect on the 1st January 2005.
- 1.2 Pennine Care NHS Foundation Trust recognises the importance of the Act and it will ensure that appropriate systems are put in place to publicise what recorded information is kept by the Trust and how this information can be accessed by members of the public.

2 INTRODUCTION

- 2.1 Pennine Care NHS Foundation Trust is a public authority by virtue of S.3(1)(a)(i) of the Freedom of Information Act (2000) (FOIA). The purpose of the FOIA is to promote a culture of openness, transparency and accountability. The FOIA puts two overarching obligations on a public authority; a duty to respond to requests for information received from members of the public, and an obligation to adopt and maintain a publication scheme.
- 2.2 This document and associated operating procedures have been written to ensure compliance with the requirements outlined within the Act, the provisions of the S.45 Code of Practice (pursuant to S.45(5) of the FOIA) and associated legislation (including the Data Protection Act (1998), Environmental Information Regulations (2004) and Re-Use of Public Sector Information Regulations (2015)).
- 2.3 Failure to comply with the requirements of the FOIA, the S.45 Code of Practice or associated legislation may result in action taken against the Trust by the Information Commissioner's Office.
- 2.4 To ensure compliance with the FOIA, Pennine Care NHS Foundation Trust will:
- Aim to respond to requests for information as promptly as possible, and within the statutory time limit of twenty working days
 - In all cases, consider whether there is a lawful requirement to disclose the requested information, and will only exempt information from disclosure where necessary
 - Deal with every request in a fair, objective manner
 - Make information available on our website and via our publication scheme

3 AIMS AND SCOPE OF THE POLICY

- 3.1 The aim of this policy and associated Standard Operating Procedures is to outline the processes Trust employees will follow to meet the requirements of the FOIA.

- 3.2 This policy applies to all staff employed by the Trust, contractors, and those providing a service on behalf of the Trust. The policy also captures all recorded information held by – or on behalf of – the Trust, including both paper and electronic records.
- 3.3 Compliance with Trust policies is a condition of employment, and breach of policy will be managed in accordance with the appropriate Trust Disciplinary Policy/Procedures
- 3.4 By virtue of S.77 of the FOIA, it is a **criminal offence** to alter, deface, block, erase, destroy or conceal any record held by the Trust, with the intention of preventing the disclosure by that authority of all, or any part, of the information that an FOI applicant would have been entitled to receive under the FOIA.

4 RESPONSIBILITIES

- 4.1 **The Chief Executive** – has an overall duty to ensure that the Trust complies with legislation affecting the handling of information within the Trust, and any supporting regulations and codes. The Chief Executive holds the role of *Qualified Person* as set out in S.36(5)(o) of the FOIA, and as such shall be responsible for authorising application of the S.36 exemption when disclosure would be *“prejudicial to the effective conduct of public affairs”*. The Chief Executive will also ensure appropriate resources are allocated across the Trust to enable compliance with this policy.
- 4.2 **Executive Team** – Where required by the Standard Operating Procedures, the Executive team will approve responses before release to the requester, and – where necessary – will provide information to assist the Information Governance team in responding to the request.
- 4.3 **Information Governance Manager** – The Trust’s Information Governance Manager shall:
- Ensure the Trust maintains compliance with the FOIA, and all associated information governance policy and legislation
 - Record and report any incidents or breaches of policy or legislation via the appropriate channels, and in accordance with local and national incident reporting policy
 - Ensure appropriate resources are available to the Information Governance team to enable compliance with this policy
 - Undertake independent reviews of FOIA responses, when created by the Senior Information Governance and Risk Officer, as part of the Trust’s FOIA appeals and complaints process
- 4.4 **Senior Information Governance and Risk Officer** – is responsible for the following duties:
- Reviewing and maintaining the Trust’s publication scheme
 - Creating and maintaining standard operating procedures relating to Trust obligations under the FOIA and Codes of Practice
 - Review information requested under the FOIA and apply appropriate lawful exemptions
 - Issuing guidance and providing training relating to FOIA

- Reviewing the effectiveness of the Trust's FOIA processes via key performance indicators and staff feedback

4.5 **Information Governance team** – is responsible for administering and responding to information requests made under FOIA in accordance with this policy. They also provide a point of contact for all staff who may require advice regarding the administering of FOI requests.

4.6 **FOI Champions** – are responsible for ensuring that information requested under the FOIA is gathered and provided to the Information Governance team to consider for disclosure. The FOI Champions will:

- Provide requested information where it is held within their remit, or where information is not held, will advise where it is held, if known
- Assist the Information Governance team in a prompt manner, to help ensure the Trust does not exceed the statutory deadline
- Advise the Information Governance team of any sensitivities or concerns regarding the requested information, so that appropriate exemptions can be applied by the Information Governance team
- Attend training sessions provided by the Senior Information Governance and Risk Officer regarding the FOIA

4.7 **All staff** – have a responsibility to ensure that the Trust complies with FOIA. Staff must ensure they pass requests and information requested to the Information Governance team as soon as possible. In general, staff should:

- Familiarise themselves with this policy and information access staff guidance available on the intranet
- Be aware that **all** recorded information held by – or on behalf of – the Trust is captured by the FOIA. This includes all information created, generated and maintained by staff, including staff emails
- Attend training
- Identify FOI requests quickly and ensure they are sent to the Information Governance team promptly
- Provide information requested in relation to an FOI request promptly

5 RELATED DOCUMENTS

- FOI Standard Operating Procedure v3.0
- Environmental Information Regulations Policy v1.0

6 POLICY REVIEW

This policy will be reviewed at least every two years, or when legislative or organisational change requires, to ensure it accurately reflects current legislation and good practice.

7 “BUSINESS AS USUAL” REQUESTS FOR INFORMATION

- 7.1 The Trust regularly makes information available to members of the public and stakeholders as part of normal business practices. Where information would be disclosed as part of normal business practices, there is no requirement to refer the request to the Information Governance team.
- 7.2 The following are examples of normal business practices where information is readily released without question. Requests for information captured by, or similar to, the below examples do not need to be referred to the Information Governance team **unless the requester specifically asks for the information under the FOIA**, or unless there are specific concerns regarding the sensitivity of the information requested. Please note, this list is not exhaustive:
- Leaflets and reference material published by the Trust for public dissemination, including self-help leaflets, annual reports, or public campaign materials
 - Information released as part of the recruitment process, including application forms and leaflets
 - Requests for information between internal departments
 - Requests for information from other NHS bodies for business purposes
 - Requests for information from public authorities for business purposes
 - Requests for opening hours, visiting times, directions or contact details
 - Written requests to the Communications team
 - Written requests to the Chief Executive’s Office
 - Providing information regarding current care and treatment using established practices; for example, sharing care plans with the service user or approved contacts as part of normal clinical interaction
 - Request for access to health records or other personal data under the Data Protection Act (1998) or Access to Health Records Act (1990). These requests are dealt with by the Subject Access team within Information Governance
- 7.3 If a “business as usual” request is received that makes mention of the FOIA, please liaise with the Information Governance team who will log the request, and assist you in ensuring we respond in a lawful manner.

8 PUBLICATION SCHEME

- 8.1 Under S.19 of the FOIA, we are obliged to adopt and maintain a Publication Scheme. A Publication Scheme is a complete guide to the information routinely published by a public authority, broken down into “*classes of information*”. The Trust have adopted the Model Publication Scheme produced by the Information Commissioner’s Office in line with S.20 of the FOIA to ensure we are publishing the classes of information that we are obliged to.
- 8.2 The Trust will publish information on the Publication Scheme in accordance with the relevant Definition Document produced by the Information Commissioner’s Office. The Definition Document outlines information that the Commissioner expected public authorities to publish to meet their obligations under S.19 of the FOIA.
- 8.3 The Trust’s Publication Scheme is available on our website. It sets out:

- What information we make routinely available
- Whether this information will be made available free of charge or on payment of a fee
- The format in which the information is available

We also provide a Guide to Information which is a PDF version of the Publication Scheme, outlining what information we are able to provide, and the means by which it is available (providing web addresses where appropriate).

- 8.4 The Senior Information Governance and Risk Officer will ensure the Publication Scheme is regularly reviewed and updated.
- 8.5 Where a member of the public requests a printed copy of information published via the Publication Scheme, the Trust will aim to comply within 5 working days.

9 FOI REQUESTS

- 9.1 Any person can request recorded information held by the Trust by exercising their rights under the FOIA. The applicant must put their request in writing, provide their real name, and clearly outline the information they seek. FOIA requests will usually be sent to the Information Governance team via the foi.penninecare@nhs.net mailbox (alternative contact methods can be found in **Appendix 1**), however they could also be sent to us via social media, or could be received by a Trust service. These are still valid requests, and so should be forwarded to foi.penninecare@nhs.net promptly for logging and administering. **Please be aware, the 20 working day time limit begins as soon as the request is received by any person or department within the Trust, or when it is posted on one of our social media sites.**
- 9.2 Requests under the FOIA cannot generally be made verbally. If a request is received from an applicant verbally, we should ask the applicant to put their request in writing. If they are unable to do so, the Trust shall liaise with the applicant to find a suitable means by which they can submit a valid request.
- 9.3 Once received by the Information Governance team, the FOI requests will be administered as per the associated Standard Operating Procedures.
- 9.4 The identity of the FOIA applicant will generally not be shared internally. The FOI Team will consider sharing the requester's identity internally in circumstances where the disclosure would be necessary, fair and lawful. When a requester's identity is shared internally, the FOI team will make a note on the request's record in Safeguard, advising that the requester's identity was shared, who it was shared with, and why it was shared.
- 9.5 In accordance with S.1(1) of the FOIA, when responding to requests for information, the Trust will advise the applicant whether or not the requested information is held, and will provide that information, unless a lawful exemption applies.
- 9.6 The Trust will endeavour to respond to requests for information as promptly as possible, and within the statutory time limit of twenty working days

- 9.7 The Trust will endeavour to provide information in the format requested by the applicant (as per our obligation under S.11 of the FOIA) unless it would be unreasonably impractical to do so. When we are unable to meet a format request, the Trust's response to the applicant's request must outline the reasons why we are unable to supply the information in the requested format.
- 9.8 Where required, the Information Governance team will provide advice and assistance in accordance with S.16 of the FOIA, advising applicants (or potential applicants) about how to submit requests, advising what information we hold within the Trust that may meet their needs, and advising how to refine their request if it exceeds the 18hr cost limit allowed by S.12 of the Act (see Section 10 – Refusing FOI Requests)
- 9.9 Where an applicant has received a response to an FOI request and expresses dissatisfaction regarding the information provided, the refusal of information (**see section 10**), or is dissatisfied with the way the request was handled, the Trust will conduct an internal review in accordance with Part VI of the S.45 Code of Practice. In accordance with section **4.3** of this policy, this is likely to be conducted by the Information Governance Manager, where the Manager is independent of the initial response. Where the Information Governance Manager has been party to the disputed response, the Manager will delegate the task to a suitable member of staff.

10 REFUSING FOI REQUESTS

- 10.1 Requests under the FOIA can only be refused if:
- A lawful exemption applies (S.21 to S.44 of the FOIA – see **Appendix 2** for full list)
 - It would take in excess of 18hrs to determine if the information is held, locate the information, retrieve the information, and/or extract the information (S.12 of the FOIA by virtue of S.3(3) of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004)
 - The request is vexatious (S.14 of the FOIA)
- 10.2 If the Trust is refusing to disclose any or all requested information, the Information Governance team will provide a refusal notice outlining:
- Whether or not the information is held (unless we are applying a lawful exemption to neither confirm or deny we hold the information)
 - What information has been refused
 - The section of the Act under which it has been refused and
 - Why the exemption is applicable
 - Means by which the applicant can appeal and complain to the Trust, and to the Information Commissioner's Office
- 10.3 Where a *prejudice based* exemption is engaged, the Trust will provide the requester with an *evidence of harm* test, outlining the harm the Trust anticipates the disclosure would cause. (See **Appendix 2**)
- 10.4 Where a *qualified* exemption is engaged, the Trust will provide the requester with a public interest test, outlining the rationale it has considered in engaging the exemption. (See **Appendix 2**)

- 10.5 If it will take in excess of 18 hours to provide the requested information (determine if the information is held, locate the information, retrieve the information, and/or extract the information), the Trust will provide an explanation of why the limit is exceeded, and – where possible - we will advise how to refine the request.

11 OPERATING PROCEDURES

- 11.1 The Trust Standard Operating Procedures for FOI document how the Information Governance department will deal with requests for information under FOIA.
- 11.2 The Standard Operating Procedures also include the way in which the Trust deals with requests for environmental information under the Environmental Information Regulations (2004), and requests to re-use information when the Trust owns the copyright (also see section 17 – Reuse of Information).
- 11.3 The operating procedure will outline how requests will be referred to FOI Champions for information gathering, how responses will be drafted by the Information Governance team, and the circumstances in which they will be signed off by senior management before a response is issued to the requester.

12 REPORTING

- 12.1 Quarterly and annual reports detailing the number of requests closed, number of requests received, compliance with the statutory deadline, and application of exemptions will be created by the Senior Information Governance and Risk Officer, and will be monitored by the Information Governance Manager.
- 12.2 Weekly statistics detailing the number of requests closed, number of requests received and compliance with the statutory deadline will be reported to the Information Governance team members administering FOIA requests.
- 12.3 The following information will be reported to the Information Governance Assurance Group:
- Number of FOI requests received in the previous quarter
 - Number of requests responded to within the 20 working day limit and the reasons for any exceeding the statutory deadline
 - Justification for the application of any exemptions
 - Details of any complaints made about any response or the FOI process itself;
 - Details of any requests that have been escalated to the Information Commissioner's Office by the applicant.

13 TRAINING

- 13.1 The Information Governance staff handling FOIA will have a suitable level of experience and/or formal training regarding the FOIA and the Data Protection

Act (1998), to a level deemed appropriate by the Information Governance Manager.

13.2 Where a training need is identified for staff who are involved in FOIA at the Trust (e.g. FOI Champions), training will be available from the Information Governance team.

13.3 Where a need is identified, the Senior Information Governance and Risk Officer will create specific training materials to assist staff in understanding the Trust's duties under the FOIA.

14 DISCLOSURE OF SENSITIVE INFORMATION

14.1 Any recorded information held by the Trust could be requested under the FOIA. This may include information that is personally or commercially sensitive in nature.

14.2 To establish whether or not a lawful exemption is engaged, the Information Governance team will require sight of the requested information. This is also necessary to establish the public interest in the information, ensuring the Information Governance team are able to provide an informed response to the requester, whether the information is being disclosed or withheld.

14.3 There will be occasions where personal information is requested under the Act. These requests will be considered in line with both the FOIA, and the Data Protection Act (1998).

14.4 Where personal data regarding staff members is requested, following guidance from the Information Commissioner's Office, the Information Governance team will consider whether disclosing the information would breach the Data Protection Act (1998). The team will consider the following factors (please note, this list is not exhaustive and each request will be considered on a case-by-case basis):

- Whether the information is personal or professional in nature
- The reasonable expectations of the individual
- The seniority of the individual concerned
- Whether the person has a public facing role
- Possible consequences of the disclosure

14.5 Where personal data regarding a patient is requested, the Information Governance team will consider the following factors (please note, this list is not exhaustive and each request will be considered on a case-by-case basis):

- Whether it is appropriate to confirm the person is a patient under the Trust (generally, it will **not** be appropriate to confirm a person is a patient at our Trust, and as such the information would be refused by virtue of S.40(5)(b)(i))
- Whether the information is available to the applicant under any other legislation (e.g. Access to Health Records Act (1990) if requesting the records of a deceased relative)
- Whether the disclosure would breach the Data Protection Act (1998) (if patient is a living individual)

- Whether the disclosure would breach the patient's right of confidentiality (if the patient is living or deceased)

15 THIRD PARTIES, CONTRACTS, AND CONFIDENTIALITY CLAUSES

- 15.1 When entering into any agreement with a third party organisation, the Trust will ensure the third party is aware of the Trust's obligations under the FOIA. The Trust will inform the third party, as part of the written contract, that any information held by them on behalf of the Trust can be requested under the FOIA, and will be disclosed unless an exemption applies.
- 15.2 The NHS Standard Contract is mandated by NHS England for use by commissioners for all contracts for healthcare services other than primary care. If entering into a contract, the Trust will ensure the NHS Standard Contract General Conditions, and in particular section GC21, are understood and adhered to.

16 REUSE OF INFORMATION

- 16.1 In pursuance of S.11A of the FOIA, (by virtue of S.102 of the Protection of Freedoms Act (2012), when responding to requests under the FOIA for *datasets* (as defined by S.11(5) of the FOIA, - see Standing Operating Procedures for further information), the Information Governance team will provide the dataset in a machine-readable format (e.g. comma-separated value format), unless an alternative format is requested by the applicant.
- 16.2 Where the Trust owns copyright or database rights for a dataset requested under FOIA, the Trust will provide it under the terms of a specified licence, as required by the FOIA.
- 16.3 Where information is not a *dataset*, Trust will consider any request to re-use our information under the Re-use of Public Sector Information Regulations (2015) (RoPSI) (further details regarding the administration of this process can be found in the Standard Operating Procedures).
- 16.4 In accordance with Regulation 17 of RoPSI, the Trust will deal with any complaints regarding a request under RoPSI under the same process as it would handle complaints under the FOIA (see Standard Operating Procedures)
- 16.5 Any requests to re-use information held by the Trust should be forward to the FOI team at foi.penninecare@nhs.net (or for alternative methods see **Appendix 1**) for consideration under RoPSI.

APPENDIX 1 – METHODS OF CONTACT

FOI Team email address:

foi.penninecare@nhs.net.

FOI Team postal address:

Freedom of Information Team
Information Governance
Pennine Care NHS Foundation Trust
225 Old Street
Ashton-under-Lyne
OL6 7SR

FOI Team telephone number:

0161 716 3146 and 0161 716 3147 – Please note, FOI requests will generally only be accepted in writing.

FOI Team Fax number:

0161 716 3389

FOI requests may also be submitted via the Trust website

- Go to <https://www.penninecare.nhs.uk/contact/>
- Enter personal details
- In “Service or Department” field, select *“My enquiry is not service related”*
- In “Send email to” field, select *“Freedom of Information”*

APPENDIX 2 – EXEMPTIONS

Section	Exemption	Absolute/Qualified	Class-based/Prejudice Based
21	Information accessible to applicant by other means	Absolute	Class-based
22	Information intended for future publication	Qualified	Class-based
23	Information supplied by, or relating to, bodies dealing with security matters	Absolute	Class-based
24	National security	Qualified	Prejudice-based
26	Defence	Qualified	Prejudice-based
27(1)	International relations	Qualified	Prejudice-based
27(2)	International relations	Qualified	Class-based
28	Relations within the United Kingdom	Qualified	Prejudice-based
29	The economy	Qualified	Prejudice-based
30	Investigations and proceedings conducted by public authorities	Qualified	Class-based
31	Law enforcement	Qualified	Prejudice-based
32	Court records, etc	Absolute	Class-based
33	Audit functions	Qualified	Prejudice-based
34	Parliamentary privilege	Absolute	Class-based
35	Formulation of government policy, etc	Qualified	Class-based
36	Prejudice to effective conduct of public affairs	Qualified	Prejudice-based
37(1)(a) to (ab)	Communications with Her Majesty, etc and honours	Absolute	Class-based
37(1)(ac) to (b)	Communications with Her Majesty, etc and honours	Qualified	Class-based
38	Health and safety	Qualified	Prejudice-based
39	Environmental information	Qualified	Class-based
40	Personal information	Absolute (but requires public interest considerations)	Class-based
41	Information provided in confidence	Absolute (but <i>test of confidence</i> required)	Class-based
42	Legal professional privilege	Qualified	Class-based
43(1)	Commercial interests	Qualified	Class-based
43(2)	Commercial interests	Qualified	Prejudice-based
44	Prohibitions on disclosure	Absolute	Class-based