

DOCUMENT CONTROL	
Title:	Freedom of Information Policy
Version:	6
Reference Number:	IG007
Scope:	
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.	
Purpose:	
The purpose of this document is to outline how the Trust will meet the statutory requirements set out in the Freedom of Information Act (2000), and the statutory and regulatory ramifications of failure to comply.	
Requirement for Policy	
This policy is a requirement of the Data Security and Protection Toolkit.	
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V5	
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<ul style="list-style-type: none"> • Reordering in line with new Trust template • Executive Directors able to delegate authority to sign off FOIs • Amendments to IG Manager’s and Senior Information Governance and Risk Officer’s (SIGRO) duties (specifically incident reporting RE FOI is the responsibility of SIGRO) • Removed section “Operating Procedures” as superfluous • Changes to Reporting – quarterly reports also sent to Information Governance Managers Meeting, and FOI Champions • Section “Disclosure of Sensitive Information” renamed as “Requests for Sensitive Information” • Appendix 1 removed and link to website added • Addition of Proactive Policy Assessment section 	
Owner:	
Senior Information Governance and Risk Officer – Sarah Browne	

Individual(s) & group(s) involved in the Development:	
This document has been developed in collaboration with the following interested parties:	
<ul style="list-style-type: none"> • The Information Governance Managers Meeting • FOI Champions 	
Individual(s) & group(s) involved in the Consultation:	
The document has been circulated for consultation and comments have been taken into consideration and the document amended accordingly:	
<ul style="list-style-type: none"> • The Information Governance Managers Meeting • The Information Governance Assurance Group • FOI Champions 	
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Responsibility of:	Senior Information Governance & Risk Officer
Other Trust documentation to which this policy relates (and when appropriate should be read in conjunction with):	
IG008	Environmental Information Regulations
CO001	Policy, Protocol and Guidance Policy

Policy Associated Documents:	
TAD_IG007_01	<u>Exemptions</u>
Other external documentation/resources to which this policy relates:	
	Freedom of Information Act 2000
	PCFT FOI Team Contact Details - https://www.penninecare.nhs.uk/about-us/accessing-information/freedom-of-information/
	General Data Protection Regulation 2016
	Data Protection Act 2018
	Environmental Information Regulations (2004)
	NHS Standard Contract
	Re-use of Public Sector Information Regulations (2015)
CQC Regulations	
This policy supports the following CQC regulations:	
17	Good Governance

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1. INTRODUCTION

Pennine Care NHS Foundation Trust is a public authority and by virtue of S.3(1)(a)(i) of the Freedom of Information Act (2000) (FOIA) and the FOI will continue 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.

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 General Data Protection Regulation (2016) (GDPR), Data Protection Act (2018) (DPA), Environmental Information Regulations (2004) and Re-Use of Public Sector Information Regulations (2015)).

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.

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. Furthermore, 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.

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
- Handle every request in a fair, objective manner
- Handle every request in an “*applicant-blind*” manner (excluding vexatious requests)
- Make information available on our website and via our publication scheme

2. PURPOSE

The purpose of this document is to outline how the Trust will meet the statutory requirements set out in the Freedom of Information Act (2000), and the statutory and regulatory ramifications of failure to comply.

3. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

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.

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. Where appropriate, the Executive Team can delegate authority of approval to appropriate staff.

Information Governance Manager – will:

- Ensure the Trust maintains compliance with the FOIA, and all associated information governance policy and legislation
- 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

Senior Information Governance and Risk Officer (SIGRO) – 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
- 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

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 any staff who may require advice regarding the administration of FOI requests.

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 (the FOI team usually ask for a response within 5 working days), 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 considered by the Information Governance team
- Attend training sessions provided by the SIGRO regarding the FOIA

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

4. FOI REQUESTS

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 on [The Pennine Care Homepage](#))

However, requests 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.**

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 Information Governance team shall liaise with the applicant to find a suitable means by which they can submit a valid request.

Once received by the Information Governance team, the FOI requests will be administered as per the associated Standard Operating Procedures.

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.

The Trust will endeavour to respond to requests for information as promptly as possible, and within the statutory time limit of twenty working days

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.

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 Refusing FOI Requests).

Where an applicant has received a response to an FOI request and expresses dissatisfaction regarding the information provided, the refusal of information (see Refusing FOI Requests), 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. As explained above, 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.

5. REQUESTS FOR SENSITIVE INFORMATION

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.

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.

There will be occasions where personal information is requested under the Act. These requests will be considered in line with the FOIA, the GDPR and the DPA.

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 GDPR or the DPA. 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

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 GDPR and/or the DPA (if patient is a living individual)
- Whether the disclosure would breach the patient's common law right of confidentiality (if the patient is living or deceased)

6. IDENTITY OF FOI REQUESTERS

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 in compliance with the GDPR and DPA, for example, where the request is believed to be vexatious.

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.

7. REFUSING FOI REQUESTS

Requests under the FOIA can only be refused if:

- A lawful exemption applies (S.21 to S.44 of the FOIA – see TAD_IG007_01 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)

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

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 TAD_IG007_01)

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 TAD_IG007_01)

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.

8. BUSINESS AS USUAL REQUESTS

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.

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 GDPR or Access to Health Records Act (1990). These requests are dealt with by the Subject Access team within Information Governance

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.

9. PERFORMANCE REPORTING

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.

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.

The following information will be reported to the Information Governance Assurance Group, the Information Governance Manager’s Meeting and FOI Champions:

- 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.

10. TRAINING

The Information Governance staff handling FOIA will have a suitable level of experience and/or formal training regarding the FOIA, the GDPR and the DPA to a level deemed appropriate by the Information Governance Manager.

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.

Where a need is identified, the SIGRO will create specific training materials to assist staff in understanding the Trust’s duties under the FOIA.

11. PUBLICATION SCHEME

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.

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.

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).

The SIGRO will ensure the Publication Scheme is regularly reviewed and updated.

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.

12. PROACTIVE POLICY ASSESSMENT

One of the requirements of the Publication Scheme is publication of our policies.

To meet this requirement, the SIGRO – working with the Policy Management Team (PMT) – will assess the suitability for external publication of any policies sent to the PMT for approval and circulation.

Policies will be assessed to establish if any exemptions under the FOIA may apply, and where they do not, the policy will be published in full externally. More information about this process can be found in CO001- Policy, Protocol and Guidance Policy.

13. THIRD PARTIES, CONTRACTS AND CONFIDENTIALITY CLAUSES

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.

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.

14. REUSE OF INFORMATION

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.

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.

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).

To be clear, RoPSI does not allow access to information; it is the law under which we consider how our information can be reused by others.

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).

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 <https://www.penninecare.nhs.uk/about-us/accessing-information/freedom-of-information/>) for consideration under RoPSI.

15. EQUALITY IMPACT ANALYSIS

As part of its development, this document was analysed to consider and address any detrimental impact the policy may have on individuals and or groups protected by the Equality Act 2010. This analysis has been undertaken and recorded using the Trust's analysis tool, and appropriate measures will be taken to remove barriers and advance equality of opportunity in the delivery of this policy.

16. FREEDOM OF INFORMATION EXEMPTION ASSESSMENT

Under the Freedom of Information Act (2000) we are obliged to publish our policies on the Trust's website, unless an exemption from disclosure applies. As part of its development, this policy was assessed to establish if it was suitable for publication under this legislation. The assessment aims to establish if disclosure of the policy could cause prejudice or harm to the Trust, or its staff, patients, or partners. This assessment has been undertaken using the Trust's Freedom of Information Exemption Guide, and will be reviewed upon each policy review.

17. INFORMATION GOVERNANCE ASSESSMENT

This Policy has been analysed to ensure it is compliant with relevant information law and standards as in place at the time of approval, and are consistent with the Trust's interpretation and implementation of information governance components such as data protection, confidentiality, consent, information risk, and records management.

Compliance will be reviewed against any changes to legislation / standards or at the next review of this document.

18. SAFEGUARDING

All staff have a responsibility to promote the welfare of any child, young person or vulnerable adult they come into contact with and in cases where there are safeguarding concerns, to act upon them and protect the individual from harm.

All staff should refer any safeguarding issues to their manager and escalate accordingly in line with the Trust Safeguarding Families Policy and Local Safeguarding Children/Adult Board processes.

19. MONITORING

The effective application of this policy, including adherence to any standards identified within will be subject to monitoring using an appropriate methodology and design, such as clinical audit.

Monitoring will take place on a biannual basis and will be reportable to the Quality Group via the Clinical Effectiveness and Quality Improvement Team.

20. REVIEW

This policy will be reviewed three-yearly unless there is a need to do so prior to this; e.g. change in national guidance.

21. REFERENCES

Freedom of Information Act (2000): <https://www.legislation.gov.uk/ukpga/2000/36/contents>

General Data Protection Regulation (2016): <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1528874672298&uri=CELEX%3A32016R0679>

Data Protection Act (2018): <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

Freedom of Information S.45 Code of Practice:

<https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Access to Health Records Act (1990):

<https://www.legislation.gov.uk/ukpga/1990/23/contents>

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations (2004): <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

Freedom of Information Act (2000) Definition Document for Health Bodies in England:
<https://ico.org.uk/media/for-organisations/documents/1220/definition-document-health-bodies-in-england.pdf>

Reuse of Public Sector Information Regulations (2015):

<http://www.legislation.gov.uk/uksi/2015/1415/contents/made>