

DOCUMENT CONTROL	
Title:	Environmental Information Regulations Policy
Version:	2
Reference Number:	IG008
Scope:	
<p>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 recorded information held by, or on behalf of, the Trust, including both paper and electronic record, that refers to:</p> <ul style="list-style-type: none"> • Information about air, water, soil, land, flora and fauna, energy, noise, waste and emissions • Any decisions, measures and activities affecting or likely to affect any of the above • Financial and cost benefit analysis used in relation to the above • Information about human health and the food chain, built structures and cultural sites inasmuch as they are or may be affected by the above factors 	
Purpose:	
<p>The purpose of this document is to outline how the Trust will meet the statutory requirements set out in the Environmental Information Regulations (2004), and the statutory and regulatory ramifications of failure to comply.</p>	
Requirement for Policy	
<p>This policy is a requirement of the Data Security and Protection Toolkit. (Formerly the IG Toolkit)</p>	
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<p>FOI; EIR; Freedom of Information, Environmental</p>	
Supersedes:	
<p>Version 1</p>	
Description of Amendment(s):	
<ul style="list-style-type: none"> • Reordering in line with new Trust template • Executive Directors able to delegate authority to sign off EIRs • Amendments to IG Manager's and Senior Information Governance and Risk Officer's (SIGRO) duties (specifically incident reporting RE EIR is the responsibility of SIGRO) • Removed section "Operating Procedures" and "Reuse of Information" 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" 	

<ul style="list-style-type: none"> • Appendix 1 removed and link to website added • Appendix 2 removed and link to website added • Addition of Proactive Policy Assessment section • GPDR 	
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 (including: Director of Capital Investments and Estates, Head of Estates, Head of Facilities and Head of Captial Projects) 	
Equality Impact Analysis:	
Date approved:	5 th July 2018
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Review:	
Next review date:	July 2021
Responsibility of:	Senior Information Governance and Risk Officer
Other Trust documentation to which this policy relates (and when appropriate should be read in conjunction with):	
CO027	Freedom Of Information Policy
CO001	Policy, Protocol and Guidance Policy
Policy Associated Documents:	
TAD_IG008_01	Exceptions
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/
	Environmental Information Regulations – S.2(1)(a)-(f) – Definition of Environmental Information http://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made
	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

The Environmental Information Regulations (2004) (EIR or Regulations, throughout) are regulations created under S.74(3) of the Freedom of Information Act (2000) (FOIA throughout). The Regulations provide members of the public with a right of access to any environmental information (defined in Regulation 2(1)(a to f)) held by public authorities.

Environmental Information refers to:

- Information about air, water, soil, land, flora and fauna, energy, noise, waste and emissions
- Any decisions, measures and activities affecting or likely to affect any of the above
- Financial and cost benefit analysis used in relation to the above
- Information about human health and the food chain, built structures and cultural sites inasmuch as they are or may be affected by the above factors

Pennine Care NHS Foundation Trust is a public authority under Regulation 2(2)(b) of the Regulations. The Regulations place three duties on the Trust:

- A duty to respond to requests for environmental information received from members of the public (Regulation 5)
- A duty to progressively make environmental information available to the public by electronic means which are easily accessible (Regulation 4(1)(a)) and
- A duty to take reasonable steps to organise our environmental information relevant to our functions with a view to the active and systematic dissemination to the public of the information (Regulation 4(1)(b)).

This document and associated operating procedure have been written to ensure compliance with the requirements outlined within the Regulations, the provisions of the Regulation 16 Code of Practice and associated legislation (including the FOIA, General Data Protection Regulation (GDPR) (2016), and Data Protection Act (DPA) (2018)).

Failure to comply with the requirements of the EIR, the Regulation 16 Code of Practice or associated legislation may result in action taken against the Trust by the Information Commissioner's Office.

By virtue of Regulation 19(1), 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 applicant would have been entitled to receive under Regulation 5 of the EIR.

To ensure compliance with the EIR, 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 Environmental Information Regulations (2004), 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 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 EIR, 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 EIR responses, when created by the Senior Information Governance and Risk Officer, as part of the Trust's EIR appeals and complaints process

Senior Information Governance and Risk Officer (SIGRO) – is responsible for the following duties:

- Reviewing and maintaining the Trust's model publication scheme under the FOIA, ensuring environmental information falling under the relevant classes of information is published
- Creating and maintaining standard operating procedures relating to Trust obligations under the EIR and Regulation 16 Code of Practice
- Review information requested under the EIR and apply appropriate lawful exemptions from disclosure (known as *exceptions* within the Regulations, and referred to as such throughout)
- Issuing guidance and providing training relating to EIR
- Reviewing the effectiveness of the Trust's EIR 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 EIR in accordance with this policy. They also provide a point of contact for any staff who may require advice regarding the administration of EIR requests.

FOI Champions – are responsible for ensuring that information requested under the EIR 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
- If the Champion considers the request complex or voluminous in nature, they will advise the Information Governance team as soon as possible, who will establish if we are able to extend the statutory deadline under Regulation 7
- Advise the Information Governance team of any sensitivities or concerns regarding the requested information, so that appropriate exceptions can be considered by the Information Governance team
- Attend training sessions provided by the SIGRO regarding the EIR

All staff – have a responsibility to ensure that the Trust complies with EIR. 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 EIR. This includes all information created, generated and maintained by staff, including staff emails
- Attend training
- Identify EIR requests quickly and ensure they are sent to the Information Governance team promptly
- Provide information requested in relation to an EIR request promptly

4. EIR REQUESTS

Any person can request recorded environmental information held by the Trust by exercising their rights under EIR. They do not need to make mention of the Regulations; as a Trust we are required to recognise that a request for environmental information must be considered under EIR.

Request under EIR can either be **verbal or in writing**. The applicant is not required to provide a name, however as we are lawfully obliged to provide a written response to the

request (irrespective of whether the request was made verbally or in writing), we will require contact information to provide a response (e.g. postal address or email address).

Any requests made verbally (e.g. over the phone or in person) should be dealt with in accordance with the FOI Standard Operating Procedures.

Written EIR requests made by email will usually be sent to the Information Governance team via the foi.penninecare@nhs.net mailbox (alternative contact methods can be found at <https://www.penninecare.nhs.uk/about-us/accessing-information/freedom-of-information/>)

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.**

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

The Trust have 20 working days to respond to the request. If the request is deemed complex or voluminous in nature, this may be extended to 40 working days (in accordance with Regulation 7(1)). The extension may be invoked to meet the requirement of providing the information, providing the information in the applicant's requested format, or to refusing the request. The Information Governance team will notify the requester within the first 20 working days that a further 20 working days will be required, and why.

The Trust will advise the applicant whether or not the requested information is held, and will provide that information, unless a lawful exception 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 (unless statutory deadline is extended to forty working days)

The Trust will endeavour to provide information in the format requested by the applicant (as per our obligation Regulation 6) unless it would be unreasonably impractical to do so (in accordance with Regulation 6(1)(a and b)). 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. In accordance with Regulation 6(2)(c), we will provide details of our internal review process (in accordance with Regulation 11), and provide details regarding how to make a complaint to the Information Commissioner's Office (in accordance with Regulation 18).

Where required, the Information Governance team will provide advice and assistance in accordance with Regulation 9 of the EIR, advising applicants (or potential applicants) about how to submit requests, advising what information we hold within the Trust that may meet their needs, advising if their request is too general (and as such could be refused under Regulation 12(4)(c)), and advising how to refine their request if the request is "*manifestly unreasonable*" in terms of the time it would take to respond to the request, or if the request is vexatious in nature.

Where an applicant has received a response to an EIR request and subsequently makes representations expressing dissatisfaction with the information provided (content or format), the refusal of information (see Refusing EIR Requests), or the way the request was handled, the Trust will conduct an internal review in accordance with Regulation 11 of the EIR. The applicant's representations should be made in writing within forty days of the date at which the applicant believes the Trust has failed in its duties under EIR (e.g. within forty days of a request being sent to us if we have failed to respond, or within forty days of the Trust responding to a request where the applicant disputes the response). 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 EIR. This may include information that is personally or commercially sensitive in nature.

To establish whether or not a lawful exception 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 EIR, 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 DP). 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 Regulation 13(5))
- 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 EIR REQUESTERS

The identity of the EIR 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 General Data Protection Regulation (2016), 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 EIR REQUESTS

In accordance with Regulation 12(2), the Trust shall apply a presumption in favour of disclosure, and in accordance with Regulation 12(1)(b) will consider the public interest in the disclosure of any information requested where an exception is considered to be engaged

Requests under the EIR can be refused on the following grounds:

- The information is not held (Regulation 12(4)(a))
- The request is manifestly unreasonable by virtue of the burden it would place on the Trust to respond (i.e. 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) (Regulation 12(4)(b))
- The request is manifestly unreasonable as it is vexatious in nature (Regulation 12(4)(b))
- The request is too general, and the applicant has been given opportunity to refine their request (Regulation 12(4)(c))
- The information is personal data of the applicant (Regulation 5(3)), or another person (Regulation 13(1))
- The information is sensitive, and a lawful exception under Regulation 12(4)(d or e) or Regulation 12(5) (TAD_IG008_01)

If the Trust is refusing to disclose any or all requested information, the Information Governance team will provide a refusal notice outlining:

- Which information is held, and which information is not (information that is not held will be refused under Regulation 12(4)(a))
- What information has been refused
- The Regulation under which it has been refused
- Why the exception is applicable
- Means by which the applicant can make representations to the Trust, and to the Information Commissioner's Office

Where a prejudice based exception is engaged, (any exception under Regulation 12(5), the Trust will provide the requester with an evidence of harm test, outlining the harm the Trust anticipates the disclosure would cause. (TAD_IG008_01)

When an exception is applied, and a public interest test is required, the Trust will provide the requester with a copy of the test, outlining the rationale it has considered in engaging the exception. (TAD_IG008_01)

If it will take in excess of 18 hours to provide the requested information, and so the request is refused under Regulation 12(4)(b) as manifestly unreasonable, the Trust will provide an explanation of why the request is unreasonable 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.

If a “business as usual” request is received that makes mention of the EIR, 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 exceptions 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 EIR requests.

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

- Number of EIR requests received in the previous quarter
- Number of requests responded to within statutory timeframe and the reasons for any exceeding the statutory deadline
- Justification for the application of any exceptions
- Details of any complaints made about any response or the EIR 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 EIR will have a suitable level of experience and/or formal training regarding the EIR, 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 EIR 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 EIR.

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 ensure environmental information appropriate to those classes of information will also be published.

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 or EIR 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 EIR. 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 EIR, and will be disclosed unless an exception 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. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. REFERENCES

Environmental Information Regulations (2004):

<https://www.legislation.gov.uk/uksi/2004/3391/contents/made>

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>

Environmental Information Regulations: Regulation 16 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>