

Manchester University NHS Foundation Trust (MFT)

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1 Introduction

- 1.1. The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs), came in to force in January 2005, and are part of the government's commitment to greater openness in the public sector. The FOIA replaces the non-statutory Code of Practice on Openness in the NHS.
- 1.2. Under the Act any individual is able to make a request for information and is entitled, subject to any exemptions or exclusions, to receive a written reply stating whether the information is held, and also to have the information communicated by a method of their request. The individual does not have to disclose the reason for their request.
- 1.3. In addition, public authorities are required to proactively publish certain information about their activities. This is the publication scheme. (See Section 16)
- 1.4. Compliance with the FOIA is a legal duty and overseen by the Information Commissioner's Office (ICO). Complaints by the public are investigated where a public body is deemed to have failed to comply with the Act, and a decision notice is issued. In cases of repeated or deliberate non-compliance an Enforcement Notice can be issued, in extreme cases a public authority can be found in contempt of court and fined up to £500,000.
- 1.5. Manchester University NHS Foundation Trust (the Trust) supports the principle that openness and not secrecy should be the norm, whilst seeking to strike a balance between transparency and the need to safeguard both personal information about patients and staff and also commercially confidential/sensitive information.

2 Purpose

- 2.1 This policy sets out the way in which the Trust shall discharge its obligations under the FOIA and the EIRs. It provides background information on the law, defines staff roles and responsibilities, and sets out standard procedure.

This policy applies to:

- all information recorded and held by the Trust (and by other authorities, on the Trust's behalf), and
- all Trust staff, including bank, agency and locum staff, students, voluntary staff, contractors, trainees on temporary placement, and those under honorary contracts.
- all written requests for specific information, which is not routinely available via the Trust publication scheme (See Section 16 for the publication scheme)

This policy details the means by which the Trust will:

- process and respond to information access requests, and
- develop and maintain a publication scheme.

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Failure to follow the procedures detailed in this policy may result in the instigation of disciplinary procedures.

3 Roles and Responsibilities

- 3.1 The Group Chief Executive has ultimate responsibility for ensuring the Trust complies with its legislative requirements.
- 3.2 The Group Caldicott Guardian is responsible for the protection of patient rights regarding the use of patient identifiable information in line with Caldicott principals, ensuring that patient identifiable data is stored, accessed and shared in an appropriate and secure manner.
- 3.3 The Group Senior Information Risk Owner (SIRO) has overall responsibility for the development and maintenance of IG practices throughout the Trust.
- 3.4 The corporate Information Governance (IG) Team is responsible for providing co-ordination and management of IG, including all FOI responsibilities.
- 3.5 Trust Senior Managers & Department FOI Leads are responsible for ensuring communication about compliance with the Trust FOI Policy.
- 3.6 All Staff are responsible for any records they create and for protecting the integrity, security and confidentiality of Trust information. Also, every member of staff is required to support the completion of FOI requests as appropriate and in a timely manner. Any FOI request received must be forwarded to the relevant Freedom of Information Office as a matter of urgency.
Contact details foi@mft.nhs.uk

4 Freedom of Information Act 2000

- 4.1 The Freedom of Information Act 2000 covers rights of access to written information, such as policies, reports, informal memos, documents and statistics. The FOIA does not give people the right to access commercially sensitive or personally identifiable information. The Act replaces the non-statutory “Code of Practice on Openness in the NHS”. Information relating to the environment, the state of the elements of the environment, and factors affecting those elements, is covered by the EIRs (See Section 9).
- 4.2 The main features of the FOIA are:
 - a duty on every public authority to adopt and maintain a publication scheme.
 - a general right of access, from 1 January 2005, to recorded information held by public authorities.

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- on receipt of a written request for information, a duty on public authorities and subject to a number of conditions and exemptions:
 - i. to inform the applicant whether they hold the information requested and
 - ii. if held, to communicate the information to him or her.

5 General Rights of Access

Section 1 of the FOIA provides a general right of access to recorded information held by the Trust, subject to a number of exemptions (See Section 8). This right of access may be exercised by anyone, anywhere in the world, regardless of motive – whether declared or implied.

The request must be made in writing and the Trust is not obliged to generate “new” information in response to a request or to record an opinion in response, since the FOIA applies only to information held at the time the request is made.

Any applicant making a verbal request for information that is not in the publication scheme, whether face-to-face or by telephone, must be asked to put the request in writing.

6 Procedure for dealing with FOI requests

The Standard Operating Procedure (SOP) for handling requests can be found on the Intranet.

7 Vexatious and Repeated Requests

The Trust is not obliged to comply with a request for information if the request is vexatious or repeated. Where the Trust has previously complied with a request for information, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the latest request.

The Trust’s central log of requests for information will be used to identify vexatious and/or repeated requests.

8 Exemptions for FOI Requests

Under section 2 of the FOIA, some information is exempt from disclosure. These exemptions are designed to protect specific interests, such as confidentiality, commercial interests, and health and safety. They can be divided into two categories:

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- Absolute exemptions protect whole “classes” of information. If information falls into a particular category, or class, it shall not be disclosed under any circumstance. In some circumstances, this also relieves the Trust of its duty to confirm or deny whether it holds the information (usually in cases whereby to confirm or deny would in itself be to disclose information that is in itself exempt). Absolute exemptions also apply where the information being requested is available via other means, for example included in the publication scheme.
- Qualified exemptions protect information subject to the public interest. If the responsible officer believes that a qualified exemption may apply, a judgement - or “public interest test” - must be made as to whether the public interest in releasing the information outweighs that in withholding it. A separate judgement must be made on whether it is in the public interest to confirm or deny what information is held. In some cases an authority will judge it to be in the public interest to confirm what it has, but not to release it.
- Details on this test can be found on the Information Commissioner’s Office (ICO) https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf

All applications for information will be assessed by the responsible officer in line with the exemptions outlined above.

See **Appendix C** for FOI exemption examples

9 The Environmental Information Regulations 2004

- 9.1 If the information requested falls under the definition of environmental information, the Trust must process it in accordance with the EIRs. The EIRs provide a general right of access to all environmental information held by public bodies, regardless of whether it was produced, or is owned by, the Trust. This right of access may be exercised by anyone, anywhere in the world.

Environmental information can be made orally as well as in writing but applicants will be advised to follow up their request in writing. EIR information requests will be subject to similar exemptions/exclusions as included in the FOIA.

- 9.2 Details of Information covered by the EIRs can be found on the ICO website: <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>
- 9.3 The Trust will ensure that all valid requests made under the EIRs are, in line with the legislation, processed within 20 working days of receipt.
- 9.4 The EIRs also require public authorities to progressively make environmental information available to the public, and to promote ease of access by taking reasonable steps to organise that information.

The Trust will ensure that measures are in place to adhere to this requirement, including responding to requests promptly and within statutory timescales, only

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withholding information if a valid exception applies, advising applicants of the appeal process and logging and monitoring all requests.

10 Exceptions for EIR Requests

The Trust may refuse to disclose information in certain exceptional situations, provided that the public interest in maintaining the exception outweighs the public interest in the information's disclosure. A presumption will always be made in favour of disclosure.

- All exceptions are subject to a public interest test.
- The ability to neither confirm nor deny the existence of information only applies in respect of the exceptions for international relations, defence and public safety.
- Where a request concerns information on emissions (the direct or indirect release of substances, noise, heat, vibrations into the environment) the following exceptions do not apply:
 - confidentiality of proceedings
 - confidentiality of commercial/industrial information
 - information supplied voluntarily
 - protection of the environment.
- Where an exception has been successfully applied to certain information, all other requested information covered by the request and not the exception must be disclosed. Where it is not reasonably capable of being separated it should be extracted or given as a summary.

11 Similarities in approach to requests made under the FOIA and the EIRs

Although they form two separate pieces of legislation, in real terms the FOIA and EIRs lay down very similar procedural requirements. The Trust has therefore adopted a unified approach to compliance with both statutes. Details can be found in **Appendix A** and in the SOP on the Intranet.

12 Differences in approach to requests made under the FOIA and EIRs

There are only three situations where the Trust's response to requests will require significantly different treatment, which are the application of exemptions/exclusions, the application of the appropriate cost limit and the appropriate handling of oral requests. There are, however, other important differences to note. These are listed in **Appendix B**.

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13 Transfer of Request

Details of the process of dealing with a Transfer of Request can be found in the SOP in the Intranet.

14 Consultation with Third Parties

14.1 Where the Request affects Legal rights of a Third Party

In some cases, the disclosure of information may affect the legal rights of a third party, for example where the information is subject to common law duty of confidentiality, or where it constitutes personal data within the meaning of the Data Protection Act 1998 (DPA).

Sections 40 and 41 of the DPA contain details of dealing with such cases.

14.2 Where a Request Affects a Third Party but not their Legal Rights

14.2.1 Consultation may still be appropriate where the interests of a third party are affected by a disclosure, but not their legal rights. The IG Team will consider each case on its merits and according to the FOIA and the DPA

14.2.3 The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided. The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

15 FOI and EIR Requests Management

The IG Team will maintain a dedicated tracker for the management of requests made under the FOIA/EIRs, and will retain electronic copies of its responses to those requests in line with the NHS Records Management Code of Practice (2016).

16 The Publication Scheme

Both the FOIA and EIRs place a duty on the Trust to adopt and maintain an approved publication scheme, or mechanism by which information may be proactively disseminated. The Trust's own publication is available on the Trust website.

The Trust has adopted the NHS model publication scheme as approved by the ICO. The scheme will be reviewed and updated by the responsible officer on a regular basis.

In addition the Trust will routinely publish responses to individual requests in the form of a disclosure log; these will just be the specific FOI question and the response.

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The scheme is divided into a number of classes of information to allow for easy navigation and will be compiled and provided to the public by The Trust.

17 Charges and Fees

17.1 Generally, information will be provided free of charge up to the appropriate cost limit of 18 hours @ £25 per hour, total £450. Where cost exceeds £450 the Trust can issue a refusal notice or ask the requestor to pay the additional cost, which is determined on a case by case basis.

18 Equality Impact Assessment

The Trust is committed to ensuring that the way in which it provides services and recruits and treats staff is reflective of individual needs, promotes equality and does not discriminate unfairly against any particular individual or group.

This policy has been assessed for its impact upon equality.

Further guidance on quality impact assessments is available on the Trust intranet pages.

19 Consultation, Approval and Ratification Process

This policy has been approved and ratified by the Informatics Strategy Board (ISB) at CMFT and The Clinical Standards Sub Committee at UHSM.

20 Dissemination and Implementation

This policy will be made available to all staff via the Intranet.

21 Monitoring Compliance of Approved Documents

An assessment of compliance with the requirements of this policy shall occur through annual submission of the nationally-mandated IGT. Annual reports and action plans shall be presented to the Information Governance Group for approval prior to submission of the IGT

In addition, a central log of requests received and processed under the FOIA will be maintained. This log shall enable the corporate IG team to monitor compliance against the relevant legislative duties. The ICO shall, in its role as regulator, monitor the Trust to form a view of its performance in adhering to the FOIA.

Given that the FOIA establishes a regime for the release of information into the public domain, members of the public shall also be subject to the effect of this policy and as such will have an interest in Trust compliance with it.

22 Standards and Key Performance Indicators (KPIs)

Performance reports shall be submitted to the Chief Informatics Officer at regular intervals.

Annual audit will show % Compliance of FOI requests dealt with within 20 working days.

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23 References

- The Freedom of Information Act 2000
- <http://www.legislation.gov.uk/ukpga/2000/36/contents>
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
- <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>
- Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000
- <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>
- The Environmental Information Regulations Code of Practice
- https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf
- The website of the Information Commissioner's Office
- <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>
- Freedom of Information section of the Trust internet site
<http://www.MFT.nhs.uk/your-trust/freedom-of-information>
- Internal Information Governance on the Intranet
<http://ig.staffnet.MFT.nhs.uk/freedom-of-information-act.aspx>

24 Associated Documents

Related Trust Policies and guidance

- Information Governance Policy
- Data Protection Policy
- Information Quality Assurance (all related policies and procedures)
- HR-related Confidentiality code of practice
- Professional codes of conduct from the BMA, GMC and NMC and others including Allied Health professionals, Finance Professionals and NHS Managers
- The Caldicott Recommendations (1997)

UK Legislation

- Freedom of Information Act (2000)
- Environmental Information Regulations (2004)
- Data Protection Act (1998)
- Human Rights Act (1998)
- Access to Health Records Act 1990 (where not superseded by the Data Protection Act 1998)
- Computer Misuse Act (1990)
- Copyright, Designs and Patents Act 1988 (as amended by the Copyright Computer Programs Regulations 1992)

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- Crime and Disorder Act (1998)
- Electronic Communications Act 2000

Legislation restricting disclosure of personal identifiable information:

- Human Fertilisation and Embryology (Disclosure of Information) Act 1992
- The National Health Service (Venereal Diseases) (SI 1974/29)
- The Abortion Act 1967
- The Adoption Act 1976

Legislation requiring disclosure of personal identifiable information:

- The Public Health (Control of Diseases) Act 1984 and Public Health (Infectious Diseases) Regulations 1985
- Births and Deaths Act 1984
- Police and Criminal Evidence Act 1984

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Appendix A Common Approaches to FOI and EIR Requests

Requirement	Trust Approach	Notes
Duty to confirm or deny	The Trust will inform the applicant whether it holds the information and if so, will communicate that information to the applicant	This duty does not apply when the applicant has been informed that further information if reasonably required
Duty to provide advice and assistance	This duty is the responsibility of the IG Team as detailed in Section 3.6 of this document	This also applies to transfers of requests – see below
The refusal of requests	To be carried out according to the POIA or EIRs, as detailed in Sections 7, 8, 10 and 11.	See also Section 6.1.7
The right of appeal	The Trust will advise applicants of the right of appeal and will provide details of its appeals procedure.	The Trust will provide details of applicants' right to complain to the ICO.
Time Limits for compliance	Valid requests for information must be processed and fulfilled with 20 working days of receipt, beginning on the first full working day and the request being received by the Trust	The time limits are affected if The Trust requires any further clarification about the request See Section 6.1.4
Communicating with applicants	The Trust's preferred platform for correspondence is email. Any responses sent by post will be dispatched via recorded delivery	If the request has been posted to The Trust, received by post, an acknowledgement will be sent if an email address is enclosed
Transferring a request	Where all or part of the information is held by another public authority the IG Team will follow procedure in this policy and SOP for any information held by The Trust. The Trust will suggest that the applicant re-applies to the correct public authority, providing any contact details. Any transfers will be carried out as soon as is reasonably practical	If The Trust is unsure whether the information requested is held by another public authority, that other authority will be consulted to ascertain if this is the case. The applicant will be kept informed of all processes and progress, and agreement sought for any transfer

Appendix B: Key Differences to note between the FOIA and the EIRs

	EIRs	FOIA	DPA
Time limit for response	20 working days (may be extended to 40 if complicated or voluminous)	20 working days (may be extended if considering the application of a qualified exemption)	40 calendar days
Format of request	Requests need not be in writing	Requests must be in writing	Written application to the Access to Health Records team with proof of ID and payment of fee
Fees	'Reasonable' fees can be charged. All requests must be complied with regardless of cost	Exemption where cost of compliance exceeds the "appropriate limit" (currently £450)	Standard charge of £10
Information covered	All environmental information which is held by the Trust is included	All information held by the Trust, except information held on behalf of another person	Information about identifiable, living individuals held by the Trust
Exemptions	Certain exceptions exist which are not always parallel to the FOIA exemptions	Exemptions are not always parallel to the EIR exemptions	Exemptions exist to accommodate for special circumstances
Public interest tests	All exceptions are subject to the public interest test	Some exemptions are absolute, and not subject to a public interest test	No public interest test
Commercial interests	Where a request relates to information on emissions into the environment, it cannot normally be refused	Information prejudicial to commercial interests can be withheld if the public interest in withholding the information outweighs that in favour of disclosure	N/A

Appendix C - Exemptions from Disclosure under the FOI Act

Section of the Act	Exemption	Type
21	The information is accessible to the applicant by other means	Absolute
22	The information is intended for future publication	Qualified
23	The information is supplied by, or relating to, bodies dealing with security matters	Absolute
24	The information is necessary to safeguard the national security	Qualified
26	Disclosure of the information would be likely to prejudice the defence of the UK	Qualified
27	Disclosure of the information would be likely to prejudice international relations	Qualified
28	Disclosure of the information would be likely to prejudice the relations within the United Kingdom	Qualified
29	Disclosure of the information would be likely to prejudice the economy of the United Kingdom	Qualified
30	The information relates to investigations and proceedings conducted by public authorities	Qualified
31	Disclosure of the information would be likely to prejudice law enforcement	Qualified
32	The information is a court record	Absolute
33	The information relates to audit functions	Qualified
34	Disclosure of the information would be likely to infringe Parliamentary privilege	Absolute
35	The information relates to the formulation of government policy	Qualified
36	Disclosure of the information would be likely to prejudice the effective conduct of public affairs	Qualified
37	The information concerns communications with Her Majesty	Qualified
38	The information concerns health and safety	Qualified
39	The information is environmental information	Qualified
40	The information is personal information	Absolute/Qualified
41	The information was provided in confidence	Absolute
42	The information is subject to legal/professional privilege	Qualified
43	The information concerns commercial interests	Qualified
44	There are legal prohibitions on disclosure	Absolute