

Freedom of Information and Environmental Information Regulations Policy

OFFICIAL CLASSIFICATION: PUBLIC	
Policy Number	IG/Pol/002
Target Audience	All Staff including temporary and contractual
Approving Committee	Corporate Clinical Policy Group
Date First Approved	October 2011
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Policy Author	Senior Information Governance Officer
Version Number	4

Applicable Statutory, Legal or National Best Practice Requirements	Freedom of Information Act (2000) Environmental Information Regulations (2004) Data Protection Act (2018) Department of Health (2003) Confidentiality: NHS Code of Practice Department of Health (2008) Common Law Duty of Confidentiality. Human Rights Act (1998) Reuse of Public Sector Information Regulations (2015)
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The Trust is committed to an environment that promotes equality, embraces diversity and respects human rights both within our workforce and in service delivery. This document should be implemented with due regard to this commitment.

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Version Control Sheet

Version	Date	Reviewed By	Comment
1.0	7th Oct 2011 24th Oct 2011		Approved by IG Subgroup Integrated Governance Committee
2.0	Dec 2015 January 2016 January 2016	Head of IG Policy Approval Group Jan McCartney	Reviewed and updated, minor changes made Approved subject to amendments Amendments completed
3.0	Dec 2017 January 2018 February 2018 February 2018	Jan McCartney Policy Approval Group Jan McCartney S. Arkwright	Full review completed Approved subject to minor amendments and reference review Amendments completed, references updated Approved by chair action
3.1	April 2021	Jackie McKay	Full Review, references updated
3.2	April 2021	M. Corkery	Comments
3.3	April 2021	Jackie McKay	Consultation undertaken – signed-off by DIGIT
4.0	April 2021	Corporate Clinical Policy Group	Approved

Does this policy impact/potentially impact on: <ul style="list-style-type: none"> • Staff • Patients • Family Members • Carers • Communities 	Yes	Please contact the Trust's Equality & Inclusion Manager at: Email: ruth.besford@nhs.net
	No	Please sign and date below: Name: Email Address: Date:

Education & Professional Development Question

In order to ensure that any training requirements are discussed and resources planned and allocated to meet the needs of the service, you must consider whether this document has additional training requirements. Please answer the following question by entering a cross in the box below:

	Yes	No
Does this document have any additional training requirements or implications?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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1 Introduction

The Freedom of Information Act (FOIA) (2000) and the Environmental Information Regulations (EIR) 2004 are legislation which supports the Government's commitment to greater openness in the public sector, a commitment supported by Bridgewater Community Healthcare NHS Foundation Trust (hereafter the Trust).

The FOIA (2000) enables members of the public to access information held by public authorities to ensure they are publically accountable for decisions and open to challenge.

The FOIA (2000) also requires public authorities to have an approved publication scheme which is a means of providing access to information that an authority proactively publishes.

The EIR (2004) provides access to environmental information held by public authorities and requires public authorities to proactively make environmental information available to the public.

The Freedom of Information and Environmental Information Regulations Policy applies to all recorded information held by the Trust. The Act and Regulations place the following requirements on the Trust:

- Staff should know that all FOIs must be processed using the central Freedom of Information (FOI) function bchft.foi@nhs.net to ensure that requests for information are quality checked for consistency and accuracy
- Staff should email any FOI requests received to the central function bchft.foi@nhs.net
- Information which is routinely published by the Trust is made available in accordance with the Trust publication scheme
- Information which is not covered in the Publication Scheme is made available to enquirers on request, which is 20 working days, unless a valid exemption or limit applies
- A fair and efficient internal appeal system is administered
- A properly structured approach to managing records is in place to ensure the essential records are maintained.

1.1 Objective

The aim of this policy is to demonstrate how the trust will achieve compliance with the Act and Regulations and to raise awareness of the responsibilities of the Trust and individual members of staff.

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1.2 Scope

This policy applies to Trust staff, including temporary and contractual staff.

2 Definitions

The definitions applicable to this policy are as follows:

Absolute Exemption	<p>Applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the FOIA.</p> <p>Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or for the balance of public interest to be in favour of non-disclosure.</p>
Applicant	The individual(s), group or organisation requesting access to information under the FOIA or the EIR.
Duty to Confirm or Deny	Duty to confirm if information is held and provide to the applicant (unless subject to exemption). Right to deny information held if it would impede lawful application.
EIR Exceptions	<p>The EIR Regulations allow public authorities to withhold certain Information if it falls within certain categories.</p> <p>An absolute exception may apply where the requested information is the personal data of someone other than the subject of that data. In all other cases, the public authority must consider whether the public interest in applying the exception outweighs the public interest in disclosing the requested information.</p>
Fees Notice	A written notification issued to an applicant stating that a fee is payable. The public authority is exempt from disclosing the information unless payment is received within three months from the date of notification.
Fees Regulations	National regulations that prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which fees are to be calculated.
General Right of Access	An applicant's right to access information from a public authority subject to certain exemptions.
Media	Journalists often request information via FOI for broadcasting and publishing information, for example, television, in a newspaper and on a website.

Information Commissioner	The Information Commissioner enforces and oversees the Data Protection Act (2018), the Freedom of Information Act (2000) and other related legislation. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament.
Public Authority	As defined in the FOIA (2000), this includes organisations such as; NHS, Education, Police, Local Government etc.
Publication Scheme	A scheme provided for within the FOIA specifying and providing the information which the Trust routinely publishes or intends to publish. This would be normally published on the trust website.
Qualified Exemption	A qualified exemption requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. For example when the information is believed to be commercially exempt.
Reuse of Public Sector Information	Re-use means using the information for a purpose other than the purpose for which the document was originally produced where a fee may be charged.
Vexatious Requests	Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

3 Abbreviations

The abbreviations applicable to this policy are as follows:

FOI	Freedom of Information
FOIA	Freedom of Information Act
EIR	Environment Information Regulations
DPA	Data Protection Act
UK	United Kingdom
ICO	Information Commissioners Office
DPO	Data Protection Officer
SIRO	Senior Information Risk Owner

DIGIT Digital and Information Governance and Information Technology Group

CCG Clinical Commissioning Group

4 Other Relevant Procedural Documents

This policy should be read in conjunction with the following documents:

Access to Health Records Policy

Data Protection Policy

Information Governance Policy

Corporate Records Management Policy

Freedom to Speak Up: Raising Concerns (Whistleblowing) Policy

Confidentiality and Information Policy

Making Adjustments for Patients with Disabilities and Language Needs Policy

Social Media Policy

Incident Reporting Policy

Risk Management Framework

5 Roles and Responsibilities

5.1 Chief Executive

The Chief Executive, as the Accountable Officer, of the Trust has overall responsibility for ensuring compliance with the FOIA and the EIR.

Ultimate responsibility for monitoring the implementation of this policy belongs to the Trust Board.

5.2 Senior Information Risk Owner

The Senior Information Risk Owner (SIRO) is currently the Director of Finance who is responsible for information risk throughout the organisation and has overall responsibility for implementing records management within the Trust.

5.3 Data Protection Officer

The Data Protection Officer (DPO) role within the Trust has responsibility to ensure that the company or organisation is correctly protecting individuals' personal data according to current legislation.

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5.4 Digital and Information Governance and Information Technology Group

Digital and Information Governance and Information Technology Group (DIGIT) will assure the Trust Board concerning the application of the principles in this policy and will report on compliance and activity.

5.5 Information Governance and Records Manager

The Information Governance and Records Manager will advise the Trust on the application of the FOIA policy, and related FOI & EIR Operational Procedures, and will provide a source of expertise on the application of exemptions and exceptions.

The Information Governance and Records Manager will ensure that written reports are presented to DIGIT to provide assurance to the Trust Board of compliance with the FOIA and EIR.

The Information Governance and Records Manager will support the administrative function for processing requests.

5.6 Communications Team

The Communications Team is responsible and will:

- Deal with any media attention following an FOI response from the Trust.

5.7 Heads of Corporate Services, Clinical Managers and Service Managers

Heads of Services, Clinical Managers and Service Managers will comply with this policy and the associated FOI & EIR operational procedures.

They are responsible for:

- Disseminating this policy and associated procedures in their department
- Monitoring compliance and for informing divisional staff of updates or changes to procedures
- Ensuring the information provided by their service/department is accurate
- Completing a Public Interest Test if they believe a qualified exemption should be applied.

5.8 Staff

All Trust staff, including temporary or contractual, will be governed by the principles in this policy and must understand that any FOIs they receive should be processed through the appropriate channel to comply with the related procedures.

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All staff are responsible for:

- Adhering to this policy
- Escalating to their Clinical Manager/Team Leader any part of the document that is identified to be no longer relevant, requires revision or may present as a risk to patient or staff safety
- Accessing the most up to date document on the intranet
- Identifying and making any specific requirements for the patient/family/carers, taking into consideration disability, language and cultural needs are identified.

6 Equipment List

Not applicable.

7 Complying with the Act

A requester may ask for any information that is held by a public authority. However, this does not mean they are always obliged to provide the information. In some cases, there will be a good reason why some or all of the information requested should not be made public.

An entire request can be refused under the following circumstances:

- It would cost too much or take too much staff time to deal with the request
- The request is vexatious
- The request repeats a previous request from the same person.

In addition, the FOIA (2000) contains a number of exemptions that allow the withholding of information from a requester. In some cases, it allows an organisation to refuse to confirm or deny whether information is held.

Some exemptions relate to a particular type of information, for instance, information relating to government policy. Other exemptions are based on the harm that would arise or would be likely arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interests.

The Trust will use all appropriate and necessary means to ensure that it complies with the FOIA (2000).

The Trust will use all appropriate means to ensure that it complies with the EIR (2004) and the associated section 16 code of practice.

This policy supports the principle that as a designated public authority, the Trust culture should be one of openness and transparency.

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This policy recognises the Common Law Duty of Confidentiality and the statutory provisions that prevent the disclosure of person identifiable information. The release of such information is subject to the access provisions of the Data Protection Act (2018) and is detailed in other Trust policies. This policy does not conflict with these duties.

The Trust believes that common standards are required to ensure that the organisation is compliant with the FOIA and the EIR. These will be established through Trust policies and procedures and will be regularly communicated to all staff.

The Trust will consider applying an exemption to the FOIA (2000) following completion of a public interest form and where it is deemed necessary. The public interest test will be undertaken by the service who is asking for an exemption.

The Trust will consider any exception within the EIR (2004) and will consider whether the public interest in applying the exception outweighs the public interest in disclosing the requested information. The public interest test will be undertaken by the service who is asking for an exception.

A record of all FOI and EIR requests and associated processes will be kept to appropriate record retention periods.

The Trust will provide staff with access to expert knowledge to assist and support them in the application of the FOIA (2000) and the EIR (2004) and will ensure that appropriate training is provided.

The Trust will publish an FOI log on the Trust website for the public to access.

7.1 Publication Scheme

The Trust will make accessible information available to the public in the form of a Publication Scheme to comply with section 19 of the FOIA (2000).

The Trust's Publication Scheme will be a prospective document, detailing the information that the Trust readily makes available to the public. The [Publication Scheme](#) will be available in electronic format on the Trusts website or hard copy on request.

The Trust will monitor and review the content of the Publication Scheme and will maintain and make available a disclosure log of all information requests.

The Trust will review the Publication Scheme following changes to guidance or recommendations issued by the Information Commissioner.

The Trust will establish and maintain systems and procedures to process requests for information arising from the Publication Scheme.

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7.2 General Rights of Access

The Trust will give a general right of access to the accessible information it holds, subject to any exemptions or exceptions that apply.

The Trust will process all written or electronic transmitted requests for information under the FOIA (2000) and verbal or written requests under the EIR (2004).

The Trust has established systems and procedures to process all FOI and EIR requests received and publish them on the Trust's internet.

7.3 Conditions and Exemptions

The Trust will conform to the duty to confirm or deny subject to the conditions and exemptions in the FOIA (2000) and the EIR (2004).

Where a request for information concerns both FOI and EIR information, each aspect of the request will be reviewed under the relevant legislation.

Reasonable effort will be made to contact the applicant for additional information if the request is unclear.

The Trust will apply the public interest test in the application of qualified FOI exemptions or EIR exceptions.

The Trust will work with applicants to keep compliance costs for FOI requests to a minimum but reserves the right to either refuse or charge for the communication of information which exceeds the appropriate limit as detailed in the FOIA (2000).

If the Trust chooses to refuse a request for information under any of the clauses in the FOIA (2000) or the EIR (2004), the applicant will be informed in writing within 20 days of the reasons for the decision by way of a refusal notice.

The applicant will be informed of the right to request an internal review and of the right to further appeal to the Information Commissioners Office (ICO).

If the Trust requires an extension to the designated 20 working day period in consideration of an exemption, the applicant will be informed of the reason(s) in writing.

Requests including those where an exemption is applied will be logged for monitoring and reporting purposes.

7.4 Charges and Fees

The Trust will generally not charge for information available in the Publication Scheme unless specified, or where it is subject to the EU Directive for re-use of Public Sector Information. The Publication Scheme will contain guidance on any charges that may apply.

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The Trust will provide documented estimates where the cost of compliance with the FOI request would exceed the appropriate limit in determining if the information is held, and locating, retrieving and extracting the information as described in the Freedom of Information Fees Regulations.

The Trust will apply the Freedom of Information Fees Regulations, subject to any change to or new guidance.

The appropriate limit under the FOIA (2000) will not be applied to EIR requests

7.5 Compliance

The Trust has established systems and procedures to comply with the prescribed time limitations in the FOIA (2000) and the EIR.

Where an applicant gives an expressed preference for communication the Trust will so far as reasonably practicable comply with that preference after due consideration to the cost and circumstances.

The Trust will provide the applicant with a written explanation as to why any request for information is refused and will log and record these instances.

FOI procedures account for the duty to provide advice and assistance to applicants insofar as it would be reasonable to expect the Trust and employees to do so.

The Trust will advise an applicant if it does not hold all or part of the information requested, assist the applicant where some or all of the information requested is held by another public authority and considers transferring any such request, where practicable.

7.6 Third Party Information

The Trust recognises that in some cases the disclosure of requested information may affect a third party and ensures that procedures reflect this.

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 its functions. The Trust will not agree to hold information received from a third party in confidence which is not confidential in nature. The acceptance of any confidentiality provisions will be justified to the Information Commissioner in the case of a complaint.

Where information constitutes "personal data" within the Data Protection Act (DPA) (2018), the Trust will have regard to section 40 of the FOIA (2000).

Where a disclosure cannot be made without the consent of a third party, the Trust will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable.

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Where a third party has not responded to a request for consultation, the Trust will comply with the duty to disclose information under the FOIA (2000) and to reply within the specified time frame of 20 days.

Consideration will be made when considering the disclosure of information under the EIR to copyright protection. The Trust will consider requests for information that may be copyrighted within the guidance issued by the Office of the Public Sector Information guidance.

Occasionally, the Trust will be asked to contribute to a third party request, for example a Clinical Commissioning Group (CCG) may receive an FOI request and ask the Trust for some of the information. The Trust should ask the third party to direct the requester to the Trust for the information, in order that it can be dealt with via the Trust procedure.

7.7 When anonymised information can identify an individual

Anonymisation is a valuable tool that allows data to be shared, whilst preserving privacy. The process of anonymising data requires that identifiers are changed in some way such as being removed, substituted, distorted, generalised or aggregated.

A person's identity can be disclosed from:

- Indirect identifiers which, when linked with other available information, could identify someone, for example information on workplace, occupation, salary ethnicity or age.

Under exemption 40, the Trust does not provide personal information, as to do so, would breach the DPA (2018). Therefore, when responding to a request which asks for indirect identifiers (see above) along with numbers, even if no name is provided a good journalist could work out an identity. The Trust does not provide data below 5. The answer is always <5.

The Trust believes that it is acceptable to release the name and job title of a senior manager, Band 7 and above, following a request for contact details or organisation structures. No personal information will be provided.

7.8 Contracts

The Trust will not agree to hold information in confidence which is not deemed confidential to Public Sector Contracts.

When entering into new contracts, the Trust should review any contractual terms which restrict the disclosure of information relating to the contract within the provisions of the FOIA (2000) or the EIR (2004).

The Trust will consider confidentiality clauses with reference to the official guidance from the Information Commissioner.

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Unless an exemption to disclose, as defined in the FOIA (2000), or exception under the EIR (2004) is applicable to any part of a contract, the Trust will be obliged to provide information in response to a request.

Where it is considered necessary to include non-disclosure provisions in a contract to all or part of the information, the Trust will take steps to agree with the contractor a schedule of the contract which clearly identifies information which should not be disclosed.

The Trust retains the right to make appropriate contractual terms with a third party organisation to restrict the disclosure of Trust information by a third party or contractor where it is the responsibility of the Trust to disclose such information.

7.9 Internal Review

The Trust will implement procedures, regarding any requests for an internal review about the discharge of its duties under the FOIA (2000) and the EIR (2004) and will make them available to the public.

Operational procedures will refer applicants to their rights, under section 50 of the FOIA (2000), to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following a failed attempt to provide a local resolution to FOI internal reviews.

The right of appeal will be considered under regulation 18 of the EIR (2004).

7.10 Records Management

The Trust will have a separate policy with supporting systems and procedures that will ensure compliance with the Lord Chancellor's Code of Practice on the Management of Records under section 46 of the FOIA (2000) and the Department of Health (2003) Confidentiality: NHS Code of Practice.

The section 46 Code of Practice under the FOIA (2000) will also apply to the EIR.

The Trust's Corporate Records Management Policy and associated procedures address the issues of active records management – see section 4.

7.11 Media Enquiries

The Trusts communications Team are made aware of FOIs submitted by the media and can prepare a statement should the media ask for comments.

Requests for information from the media are already dealt with by the Trusts established process that attempts to be as open as possible and aims to meet response targets that are much shorter than those for FOIA (2000). Where possible, this type of enquiry will continue to be met in this way.

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8 Consultation

Key individuals/groups involved in the development of the document to ensure it is fit for purpose once approved.

Name	Designation
DIGIT	Digital, Information Governance and Information Technology Group
Mary Corkery	Head Policy Officer
Ruth Besford	Equality and Inclusion Manager
Razia Nazir	Knowledge and Library Service Manager
Mike Baker	Assistant Director of Communications
Corporate Clinical Policy Group	

9 Dissemination and Implementation

9.1 Dissemination

The Senior Information Governance Officer will disseminate this policy to team leaders for cascading to all staff using global email and team brief. The policy will be made available on the Trust intranet (the Hub) and published in the bulletin.

9.2 Implementation

All Trust staff will be made aware of their personal and organisational responsibilities to respond to freedom of information requests through generic and specific training programmes and guidance materials, which will be annually reviewed and updated.

The Senior Information Governance Officer will support staff in compliance with freedom of information procedures.

New employees will be made aware of this policy through the Induction process.

10 Process for Monitoring Compliance and Effectiveness

The implementation and compliance with this policy will be monitored by the DIGIT group.

Quarterly reports will be provided to the DIGIT group to monitor compliance.

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Compliance with this policy will be monitored during the investigation of complaints or identified incidents or risks.

11 Standards/Key Performance Indicators

FOI Requests should be responded to within 20 working days. Response times are monitored and reported quarterly through the DIGIT group.

12 References

Data Protection Act (2018), c.12 [online]. Available at:
<https://www.legislation.gov.uk/ukpga/2018/12/contents>

Department of Health (2003) Confidentiality: NHS Code of Practice [online]. Available at: <https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>

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<http://www.legislation.gov.uk/ukpga/2000/36/contents>

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