

Freedom of Information Act 2000 Policy

(including Environmental Information Regulations 2004 and Re-Use of Public Sector Information Regulations 2015)

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EXECUTIVE SUMMARY

The Freedom of Information Act 2000 (the FOI Act) is part of the Government's commitment to greater openness in the public sector. It enables members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered.

The main features of the FOI Act are:

- a) general right of access to recorded information held by public authorities, subject to certain conditions and exemptions;
- b) in cases where information is exempted from disclosure, except where an absolute exemption applies, a duty is on public authorities to:
 - i. inform the applicant whether they hold the information requested;
 - ii. communicate the information to the applicant unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure
- c) a duty on every public authority to adopt and maintain a Publication Scheme following the new model published by the Information Commissioner's Office which came into force on 1 January 2009;
- d) creation of the Information Commissioner's Office with wide powers to enforce the rights created by the FOI Act and to promote good practice, and creation of a new Information Tribunal;

The Environmental Information Regulations 2004 (EIRs) give rights of public access to environmental information held by public authorities. Environmental information can be summarised as:

- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites and the interaction between these elements;
- b) factors such as substances, energy, noise, radiation or waste affecting or likely to affect the elements of the environment;
- c) measures such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect or protect the elements of the environment;
- d) reports on the implementation of environmental legislation;
- e) cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities; and
- f) the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment.

The Trust has two main obligations under the EIRs. It must:

- a) make environmental information available proactively, using easily accessible electronic means whenever possible; and
- b) respond to requests for environmental information.

The Re-Use of Public Sector Information Regulations 2015 (RPSI) is about permitting re-use of information and how it is made available:

- a) Public sector information means information the Trust produces as part of its public task. 'Public task' means the Trust's core role and functions, as defined in legislation or established through custom and practice;
- b) RPSI does not apply to information that would be exempt from disclosure under information access legislation, ie the Data Protection Act (the DPA), FOI Act and EIRs;

- c) However, information that would be exempt from an access request under section 21 of FOI Act because it is already reasonably accessible to the requester (for example because it is on the Trust's website) would normally be available for re-use.
- d) RPSI does not apply to recorded information the Trust holds if someone else holds the intellectual property rights (eg copyright or database right). The Trust can only permit re-use if it holds the intellectual property rights in the information

This policy is a statement of what the Trust intends to do to ensure compliance with the FOI Act, the EIRs and RPSI.

Scope of this policy

This policy is intended to cover all records created within the Trust that fall under the FOI Act, the EIRs and RPSI. This would include corporate records, public records under the terms of the Public Records Act 1958 and 1967 and personal data requested by a third party. This includes e-mail messages and other electronic records, including written communication via the Trust's social media and instant messaging apps. If, however, releasing any personal data requested would breach any of the Data Protection Principles, the request would become exempt.

The Policy outlines good practice and identifies the responsibilities of the Trust's staff in terms of FOI, EIR and RPSI and should be read alongside the Data Security and Protection Policy and professional codes of conduct.

KCHFT will endeavour to ensure that:

- a) the majority of information is made available through the intranet and publication scheme;
- b) other information is readily available on request;
- c) if the information requested is subject to a qualified exemption/exception, the Trust will implement the Public Interest Test to determine whether the information can be released;
- d) NHS England's Prevent Strategic Lead is notified of any FOI submissions that are regarded as falling within the Prevent or Channel categories;
- e) wherever possible, information is permitted for re-use under the Open Government Licence, unless information is owned by a third party.

This policy applies to all of the Trust's employees, including Non-Executive Directors, contractors, temporary, seconded, work experience, bank or agency staff.

It will provide a framework within which the Trust will ensure compliance with the requirements of the FOI Act, the EIRs and RPSI.

It underpins any operational procedures and activities connected with the implementation of the FOI Act, the EIRs and RPSI.

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1.0 INTRODUCTION

- 1.1 This policy supports the principle that openness and not secrecy should be the norm in public life. The Trust wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the Trust will facilitate the development of such an environment.
- 1.2 This policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. However, it should be noted that requests for personal information are covered in the, first instance, under the Data Protection Act (see exceptions).
- 1.3 In line with the FOI Act, EIRs and RPSI the Trust will endeavour to release requested information wherever possible, unless an absolute exemption applies (in relation to FOI requests) or when the public interest is clearly served by withholding the requested information.
- 1.4 This policy sets out a framework to provide expert knowledge to assist and support staff in understanding the implications of the FOI Act, EIRs and RPSI.
- 1.5 This policy outlines the areas in which common standards will be established through other policies and procedures to ensure that the Trust is compliant with the FOI Act, EIRs and RPSI.

2.0 OBJECTIVES OF THIS POLICY

- 2.1 The Trust will use all appropriate and necessary means to ensure that it complies with:
- the FOI Act,
 - EIRs,
 - RPSI
 - associated Codes of Practice pursuant to the FOI Act EIRs and RPSI

3.0 PUBLICATION SCHEME

- 3.1 The Trust has adopted model Publication Scheme developed by the Information Commissioner's Office. The Scheme sets out the following:
- a) the classes of information published, or intended to be published;
 - b) the manner in which publication is, or is intended to be made;
 - c) whether the information is available free of charge or if payment is required.
- 3.3 The Publication Scheme will be available in hard copy on request and through our website at www.kentcht.nhs.uk. It will be subject to regular review in terms of content.
- 3.4 Applications for information listed in the Publication Scheme may be received verbally or in writing. The Trust will establish systems and procedures to process applications arising from the Publication Scheme.

4.0 INFORMATION ASSET LIST

- 4.1 To comply with the RPSI the Trust has to publish a list of the main information it holds within its public task. This will include information that the Trust already publishes proactively and unpublished information.
- 4.2 Much of the information in the asset list is likely to be in the publication scheme, so the Trust may choose to combine the two documents.

5.0 REQUESTS FOR INFORMATION

5.1 General rights of access

- 5.1.1 Any person making a request for information to the Trust is entitled to:
- a) be informed in writing whether the Trust holds the requested information – this is referred to as the ‘duty to confirm or deny’;
 - b) have that information communicated to them, if held by the Trust – this is referred to as the ‘duty to communicate’.
- 5.1.2 The RPSI gives an individual, company or other organisation the right to take information the Trust has provided and republish it. For this purpose, the Trust allows re-use under the [Open Government Licence](#), available on the [National Archives website](#), unless stated otherwise.
- 5.1.3 If the information requested is held by the Trust, there is a duty to communicate and permit re-use, subject to any exemptions.
- 5.1.4 In accordance with the FOI Act a request for information must be made in writing, must state a name and an address for correspondence.
- 5.1.5 In accordance with the EIRs a ‘request for information’ does not need to be in writing.
- 5.1.6 The Trust will provide advice and assistance as appropriate to ensure all applicants are able to submit their requests in accordance with the legislation.
- 5.1.7 The Trust may charge for the communication of any information unless a fee exemption applies, or is not otherwise required by law.
- 5.1.8 The Trust has established systems and procedures to log and process requests for information which are available in the Corporate Operations shared drive.
- 5.1.9 The Information Commissioner’s Office has also published procedures for handling requests for information on its website at: https://ico.org.uk/media/for-organisations/documents/1167/flowchart_of_request_handling_under_foia.pdf.

5.2 Conditions and exemptions

- 5.2.1 The general right of access referred to in the FOI Act and EIRs is subject to the following provisions, where the Trust:
- a) reasonably requires further information in order to identify and locate the information requested;
 - b) has informed the applicant of that requirement.

- 5.2.2 The Trust will make reasonable efforts to contact the applicant for additional information about their request should further information be required. Under the FOI Act, the 'duty to confirm or deny' does not arise where an absolute exemption applies or where to do so would or would be likely to cause prejudice [harm] were this duty to be applied, and where exempt information would be released by the process of confirming its existence.
- 5.2.3 The 'duty to communicate' does not arise where an absolute exemption applies, where the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Where the balance is equal the information would be released. The Trust will seek to use the qualified exemptions (see [appendix 1](#)) and exceptions (see [appendix 2](#)) sparingly and will, in accordance with the FOI Act and EIRs, justify their use.
- 5.2.4 The 'duty to communicate' does not arise if a fees notice (see 'Fees and Charges' section 5.3 below) has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant. The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit established in national Fees Regulations. The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either refuse or charge for the communication of information that exceeds this limit.
- 5.2.5 Under FOI, 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 which was made by any person, it is not obliged to comply with a subsequent identical or similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
- 5.2.6 The Trust may impose conditions on the re-use of information, where appropriate through a licence. Where conditions are imposed they must not unnecessarily restrict the way in which a document can be re-used or unnecessarily restrict competition.
- 5.2.7 RPSI does not apply to information that would be exempt from disclosure under information access legislation, ie the Data Protection Act (the DPA), the FOI Act and EIRs.
- 5.2.8 RPSI does not apply to recorded information the Trust holds if someone else holds the intellectual property rights (eg copyright or database right). The Trust can only permit re-use if it holds the intellectual property rights in the information.

5.3 Fees and charges

- 5.3.1 The Trust will generally not charge for information contained within its Publication Scheme or Information Asset List, however charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. The Publication Scheme and the procedures that support this policy will provide further guidance on charging.

5.3.2 The Trust will follow the national Fees Regulations for general rights of access under the FOI Act. These set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied. In all cases a fees notice will be issued to the applicant as required by the FOI. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

5.3.3 There is no 'cost limit' for dealing with EIRs but requests that cost a disproportionate amount can be refused on the basis that they are manifestly unreasonable, subject to a public interest test.

5.4 Time limits for compliance with requests

5.4.1 From receipt of a valid FOI or EIR request the Trust has 20 working days to provide a response.

5.4.2 The timescale can be extended in the following circumstances:

- complex and voluminous EIR requests can be extended to 40 working days; and
- where a qualified exemption/exception is being considered and it is necessary to assess the balance of public interest

5.4.3 In both of the above cases the Trust must respond initially within 20 working days explaining this and provide an estimated response date.

5.4.4 All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

5.4.5 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, the 20 working day response deadline begins the day after receipt of payment/cheque clearance.

5.5 Means by which information will be conveyed

5.5.1 The Trust will try where reasonably practicable to meet an applicant's preference for how the information is provided.

5.5.2 In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. The Trust will notify the applicant if it determines that it is not reasonably practicable to provide the information by the means requested.

5.5.3 The Trust must make information for re-use available in the format and language in which it is held. If not already held in an open and machine-readable format with metadata, but it is possible and appropriate to make it available in this way, then this should be done.

5.5.4 Where information is or forms part of a dataset (see glossary for definition) and the applicant expresses a preference for communication in an electronic form, the Trust must, so far as reasonably practical, provide information to the applicant in an electronic, machine readable form, which is capable of re-use (preferably open formats such as CSV).

5.6 Refusal of requests

5.6.1 Under the FOI Act a refusal to a request can apply if an exemption exists (see [appendix 1](#)).

5.6.2 Under EIRs a refusal to a request can apply in two instances:

- a) requests that cost a disproportionate amount can be refused on the basis that they are manifestly unreasonable, subject to a public interest test
- b) an exception exists (see [appendix 2](#))

5.6.3 If the Trust chooses to refuse a request for information under paragraphs 5.6.1, 5.6.2, the applicant will be informed of the reasons for this decision within 20 working days. Any response should not involve the disclosure of information which would itself be exempt information. The applicant will also be informed of the procedures for making a complaint about the discharge of the Trust's duties and of the right to apply to the Information Commissioner's Office for a decision.

5.6.4 Where the Trust has not yet reached a decision as to the application of an exemption/exception, the Trust must respond initially within 20 working days explaining this and provide an estimated response date. Any explanation should not involve the disclosure of information which would itself be exempt information.

5.6.5 As indicated by the government's Code of Practice issued under the FOI Act and EIRs, such estimates as described above should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed.

5.7 Duty to provide advice and assistance

5.7.1 The Trust has a duty to provide advice and assistance to requesters, as far as can be reasonably expected, in order to:

- a) Understand what information is being requested;
- b) Refine a request to keep it within the appropriate cost limit; and
- c) Direct the requester to where information not held by the Trust can be found.

5.8 Transferring requests for information

5.8.1 If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider what would be the most helpful way of assisting the applicant. In most cases this is likely to involve:

- a) Contacting the applicant and informing them that the information requested may be held by another public authority;
- b) Suggesting that the applicant re-applies to the authority which the Trust believes to hold the information;
- c) Providing the applicant with contact details for that authority.

5.8.2 If the Trust considers it to be more appropriate to transfer a request or part thereof to another public authority, it can only do so if:

- a) The information is known to be held by another public authority;
- b) The other public authority has agreed to the transfer; and

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- c) The applicant has consented to the request (or part thereof) being transferred to the other public authority.

5.8.3 The Trust recognises that 'holding' information includes holding a copy of a record produced or supplied by another person or body but under FOI does not extend to holding a record on behalf of another person or body as provided for in the FOI Act.

5.8.4 The initial request for information will always be processed in accordance with the FOI Act in respect of information it holds. The Trust will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies.

5.8.5 All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done.

5.9 Consultation with third parties

5.9.1 The Trust recognises that in some cases the disclosure of information may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes 'personal data' within the meaning of the DPA.

5.9.2 Where a disclosure of information cannot be made without the consent of a third party, the Trust will consult that third party with a view to obtaining their consent to the disclosure. Where the interests of the third party may be affected by a disclosure but do not give rise to legal rights, consultation may still be appropriate.

5.9.3 The Trust will undertake consultation where:

- a) the views of the third party may assist the Trust to determine whether an exemption or exception applies to the information requested; or
- b) the views of the third party may assist the Trust to determine where the public interest lies under the FOI Act and EIR.

5.9.4 In some cases the cost of consulting third parties may be disproportionate. If this is the case, the Trust will consider the most reasonable course of action to take in light of FOI & EIR Legislation and the individual circumstances of the request.

Consultation will be unnecessary where:

- a) the Trust does not intend to disclose the information relying on some other legitimate ground under the terms of the FOI Act or EIRs;
- b) the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- c) no exemption or exception applies and so under the FOI Act's provisions, the information must be provided

5.9.5 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative which can express views on behalf of those parties, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative. If there is no representative, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

5.9.6 The fact that the third party has not responded to consultation or is not contactable does not relieve the Trust of its duty to disclose information, or its duty to reply

within the time specified. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

5.10 Public sector contracts

- 5.10.1 When entering into contracts the Trust will refuse to include contractual terms that restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the FOI Act and EIRs. Unless an exemption/exception is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
- 5.10.2 When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure.
- 5.10.3 As recommended by the Codes of Practice issued under the FOI Act and EIRs, the Trust will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. Any confidentiality provision would need to have a 'Duty of Confidence' that could be proven in a court of law.
- 5.10.4 The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the codes of practices indicate that exemptions and exceptions only apply if information has been obtained by a public authority from another person and the disclosure of the information to the public would constitute a breach of confidence actionable by that, or any other person.
- 5.10.5 Information provided in confidence is information obtained by the Trust from another person including another authority; where that person or any other person could successfully file for breach of confidence (duty of confidentiality).
- 5.10.6 The Trust's policy is that all contracts include a non-disclosure agreement to protect this Trust from information being disclosed by contractors that they have access to as part of their contract. All information relating to work carried out on behalf of the Trust by any contractor is 'held' by the Trust, regardless of whether that information is with the contractor or with the Trust. Where a request for information relating to work carried out by a contractor is received by the Trust, it is necessary for the contractor to provide the information to the Trust as quickly as possible to enable the Trust to comply with the FOI Act and EIRs. This obligation on the part of the contractor will be made clear to the contractor prior to any contract being undertaken.
- 5.10.7 Where a contractor has information that would comply with the 'Duty of Confidence' as described above, and that this information if released would breach the duty of confidence, then the contractor would need to discuss this with the Trust usually at the start of the contract. An example would include a Trade Secret.

5.10.8 Any information that does not hold a Duty of Confidence i.e. would be enforceable in law, would need to be released upon request unless an exemption/exception existed or the public interest would suggest it was not in the public interest to release.

5.10.9 This Trust will not enter into contracts or agreements with contractors to withhold information where there is no true or substantial duty of confidence.

5.11 Accepting information in confidence from third parties

5.11.1 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 Trust's functions and it would not otherwise be provided. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner's Office.

5.12 Anonymisation of Data

5.12.1 Anonymising data can be achieved via manual redaction and also by using redaction tools available in computer software programmes such as Adobe Professional.

5.12.2 When manually redacting data, it is recommended to photocopy and redact at least 3 times until the redacted data is not visible when the document is held up to a light.

5.12.3 When using a computer software programme to redact data it is recommended to print the final version then photocopy/scan it before releasing the data to reduce the risk of the redaction being reversed by computer software.

5.12.4 As well as removing names and other personal information, care also needs to be taken to ensure other statistical data does not lead to individuals being identified. In cases where statistical numbers are small, the Trust must consider providing the data at a level that reduces the risk of identification. Where it is not possible to do this the Trust must consider applying the appropriate data protection exemption.

5.12.5 The ICO's Anonymisation Code of Practice (the Code) aims to support a methodical and structured approach to assessing and managing the risks to individuals' personal information. The Code focuses on the legal tests required under the Data Protection Act 2018(DPA) as well as considering the FOI Act.

5.12.6 The Code identifies the need to assess 'what else is out there' when considering whether to release anonymised data. This is because the definition of Personal Data in the DPA refers to any information relating to an identified or identifiable living individual.

5.12.7 The Trust therefore needs to consider the 'motivated intruder test' before releasing anonymised data. The test involves considering whether an 'intruder' would be able to achieve re-identification if they were motivated to attempt this. This test assumes that the 'motivated intruder' is reasonably competent but does not have any specialist knowledge such as computer hacking skills, or to have access to specialist equipment or would resort to criminality such as burglary, to gain access to data that is kept securely. They are assumed to have access to resources such as:

- a) libraries;
- b) local council offices;
- c) church records;
- d) General Registry Office;
- e) genealogy websites;
- f) Social media; internet searches;
- g) local and national press archives;
- h) anonymized data released by other organisations, particularly public authorities;

and would employ investigative techniques such as making enquiries of people who may have additional knowledge of the identity of the data subject such as advertising for anyone with information to come forward.

5.12.8 The motivated intruder test sets a higher risk of re identification than if the Trust was considering a 'relatively inexperienced' member of the public.

5.12.9 Where data to be released is collated into age ranges, it may be necessary to widen the age ranges to reduce the risk of patients being identified.

5.12.10 The Trust also needs to consider carefully the way it releases 'spacial information' (such as postcodes, GPS data and map references). Postcode data can sometimes result in identification when combined with other items. In some cases postcodes can relate to only one property. In such instances, it may be necessary to widen the criteria to include more data so that the risk of identification is reduced.

5.13 Conditions on re-use of information

5.13.1 The RPSI gives an individual, company or other organisation the right to take information the Trust has provided and republish it. For this purpose, the Trust allows re-use under the [Open Government Licence](#), available on the [National Archives website](#), unless stated otherwise.

5.13.1 The Trust may choose to impose conditions on re-use of information; however the conditions must be as open and non-restrictive as possible.

5.13.2 The Trust must not enter into exclusive licencing arrangements with a particular person or organisation, however there are some limited exceptions to this. Full details on the prohibition of exclusive licencing arrangements and exceptions is available at <http://www.legislation.gov.uk/ukxi/2015/1415/regulation/14/made>.

5.14 Complaint/internal review process

5.14.1 Any applicant has the right to request an internal review if they feel the Trust has failed to:

- provide a right of access to information held by the Trust in accordance with the FOI Act,
- make environmental information available in accordance with the Environmental information Regulations, or
- permit re-use of public sector information

5.14.2 Requests for an internal review must be made in writing within 2 months of the date the applicant received the Trust's response to the original request.

5.14.3 Upon receipt of the request for review, the Compliance Officer will log the request and send an acknowledgement to the requester.

5.14.4 The review must not be handled by anyone who dealt with the original decision, although it may be necessary to consult the original request handler. It must be referred to someone with the appropriate level of seniority and expertise.

5.14.5 The reviewer will consider the request and any supporting evidence produced by the requester and will decide whether the Trust has complied with its duties. The requester will be notified of the decision within 20 working days from the day after the review request was received

5.14.6 If it is decided that the Trust has not complied with its duties, the breach shall be remedied immediately and the Information Governance Assurance Group will be notified. The reviewer will ensure proper recording and processing of the review.

5.15 Complaints to the Information Commissioner's Office

5.15.1 Individuals are free to contact the Information Commissioner's Office directly in the event they remain dissatisfied with the conduct of the Trust in resolving their complaint:

Information Commissioner's Office
Wycliffe House Water Lane Wilmslow
Cheshire SK9 5AF

Tel: 0303 123 1113 (local rate number)

E-mail: casework@ico.org.uk

Website: <https://ico.org.uk/global/contact-us/>

5.16 Records management

5.16.1 Effective records management supports the efficient response to all requests received under the FOI Act and EIRs.

5.16.2 The Trust's Data Security and Protection Policy and associated procedures guides effective records management – from creation, maintenance through to disposal according to the requirements that the law places upon the Trust. The Policy also references the Records Management Code of Practice 2021 for Health and Social Care.

5.17 Compliance Statistics

5.17.1 In accordance with the government's FOI Code of Practice the Trust is required to publish quarterly (in line with central government) details of its performance on handling requests for information under the FOI Act. The information should include:

- Number of requests received
- Number of requests pending/open at month end
- Number of requests responded to in full
- Number of requests refused in full/no information held
- Number of requests responded to in part
- Number of responses which breached 20 working day deadline
- Number of internal reviews requested

- Number of requests closed/withdrawn/no clarification received
- Number of complaints to ICO (only required to be reported annually)

6.0 TRAINING AND AWARENESS

- 6.1 The Compliance Officer will work with the Information Governance Assurance Lead and the Trust's Learning and Development Manager to ensure that training on the FOI Act, EIRs and RPSI is available to staff and Non- Executive Directors who require it.
- 6.2 A copy of this policy and relevant guidance will be made available to all staff and Non- Executive Directors on the Trust's website www.kentcht.nhs.uk as well as through team brief and staff newsletters.

7.0 ROLES AND RESPONSIBILITIES

7.1 Information Governance Assurance Group

- 7.1.1 Owns this document and is responsible for approving any changes.

7.2 Corporate Assurance and Risk Management Group

- 7.2.1 Is responsible for authorising any significant changes to this policy.

7.3 Chief Executive

- 7.3.1 The Chief Executive will have overall responsibility for FOI, EIRs and RPSI and give their 'reasonable opinion' as to whether or not disclosure of information under the FOI Act would or would be likely to cause the types of prejudice or inhibition listed under section 36 exemption.

7.4 Chief Finance Officer

- 7.4.1 Is the FOI Lead at Board level ensuring a system is in place for the management of requests under the FOI Act, EIRs and RPSI.

7.5 Information Governance Assurance Lead

- 7.5.1 To oversee the work of the Compliance Officer and provide annual leave/sickness cover when required.
- 7.5.2 To review any complaint/internal review requests as detailed in section 5.14; unless the original request was processed by them.

7.6 Compliance Officer

- 7.6.1 To oversee the implementation of this policy on behalf of the Chief Finance Officer and to work with the Trust's Legal Team and the Information Governance Assurance Lead to:
- a) ensure the Trust's compliance with the FOI Act 2000, the EIRs 2004 and RPSI Regulations 2015;
 - b) maintain this policy, the Publication Scheme and the Information Asset List;
 - c) promote the awareness of FOI, EIRs and RPSI throughout the Trust;

- d) ensure the general public have access to information about their rights under the FOI Act 2000, EIRs 2004 and RPSI Regulations 2015;
- e) assist with investigations into complaints and appeals;
- f) work closely with the Trust's Legal Team and other employees responsible for information handling activities, e.g. Caldicott Guardian, IG Compliance Manager;
- g) ensure the process for responding to prevent/extremism FOI requests is followed in accordance with the Department of Health/NHS England guidance and the Government's Channel Guidance.
- h) share anonymised responses with the Communications team, where it is clear a request has come from the media, to assist with any follow up enquiries the Communications team may receive.
- i) publish quarterly FOI compliance statistics on the Trust's public website

7.6.2 To review any complaint/internal review requests as detailed in section 5.14; where the original request was processed by the Information Governance Assurance Lead.

7.7 Responsibilities of staff

7.7.1 To forward any requests for information they receive, which fall outside of normal business as usual requests, to the FOI team at kcht.foi@nhs.net. (The statutory response time begins from the day the request is received into the organisation, regardless of the address it is sent to.)

7.7.2 Individual staff could be convicted in a court of law if they alter, deface, block, erase, destroy, or conceal any record held by the public authority, with the intention of preventing the disclosure by that authority of all or any part of the information of which an applicant would have been entitled.

7.7.3 Departmental managers are responsible for ensuring:

- a) Information is supplied promptly in response to an FOI/EIR request and within the deadline set by the Compliance Officer in order to allow time for them to process the information in relation to any exemptions/exceptions, contacting of any third parties, redacting where necessary and communicating the information.
- b) Information the department has published within the Publication Scheme is regularly updated;
- c) Information not included within the Scheme is created and stored in accordance with procedures and processes to enable easy location when required.
- d) Information regularly requested under FOI is regularly published within the Publication Scheme;
- e) the Compliance Officer is made aware of any reasons that could affect the Trust's ability to allow the re-use of any information supplied to the Compliance Officer or published under the Publication Scheme.

7.7.4 Other members of staff are responsible for:

- a) the creation of their own records and for adhering to the Trust's Records Management procedures and processes;
- b) informing their departmental or line managers of the creation of any new categories of document.

7.7.5 All staff and Non-Executive Directors are obliged to adhere to this policy. A failure to adhere to this policy and its associated procedures may result in disciplinary action.

7.7.6 Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. They are also responsible for ensuring staff are updated in regard to any changes in this policy.

8.0 EXCEPTIONS

8.1 Subject Access requests

8.1.1 Requests for access to an individuals' own personal data is exempt from the Freedom of Information Act and should be forwarded to the Trust's Legal Services Department for Health Records, and the Human Resources department for staff information. This includes third party requests and requests to access deceased patient records.

8.2 Names and contact details of staff below Executive Director Level

8.2.1 Staff details under Executive Director level constitutes the personal information of the individuals concerned (names, job titles and contact details) and is therefore covered by the Data Protection Act. This information is therefore exempt information under the Freedom of Information Act.

GOVERNANCE SCHEDULE

Ratification process

Governance Group responsible for developing document	Information Governance Assurance Group
Circulation group	Intranet, Policy Distribution
Authorised/Ratified by Governance Group/Board Committee	Corporate Assurance Risk Management Group
Authorised/Ratified On	24 February 2022 (IGAG)
Review Date	January 2025
Review criteria	This document will be reviewed prior to review date if a legislative change or other event dictates.

Key references

Freedom of Information Act 2000
Information Commissioner's Office model publication scheme
Data Protection Act 2018
Freedom of Information Act 2000 staff guide leaflet
Freedom of Information Code of Practice
Code of practice on the discharge of obligations of Public Authorities under Environmental Information Regulations 2004
Environmental Information Regulations 2004
NHSX Records Management Code of Practice 2021 for Health and Social Care
ICO's Anonymisation Code of Practice
Re-Use of Public Sector Information Regulations 2015
Open Government Licence

The National Archives UK Government Licensing Framework
NHS England and Department of Health Process for responding to prevent/extremism Freedom of Information Act requests. Publication Gateway reference no. 04364
HM Government's Channel Duty Guidance: protecting people vulnerable to being drawn into terrorism

Title	Reference
Incident Policy	CQS016
Risk Management Strategy	CQS017
Customer Care Policy	IML002
Being Open Policy	IML004
Data Security and Protection Policy	KIG025
Privacy and Dignity Policy	QC001
Accessible Information Policy	IML006

DOCUMENT TRACKING SYSTEM

Version	Status	Date	Issued to/approved By	Comments / summary of changes
2.0	Approved		Published	Approved document circulated
2.1	Approved	November 2010	Records Officer	<ul style="list-style-type: none"> Changed logo to new Health Trust logo Changed references to Health Trust in the text
2.2	Draft	February 2011	Trust Board	Policy amended new Trust for Approval
3.0	Approved	12 April 2011	Published	Approved document circulated
3.1	Approved	18 April 2013	Published	Minor Changes
3.2	Approved	27 June 2014	Published	ICO telephone number updated
3.3	Approved	23 February 2015	Published	Minor changes to complaints procedure
3.4	Approved	November 2016	Compliance Officer	Inclusion of reference to DOH and NHS England guidance; Updated to follow new policy template; document reformatted
4.0	Draft	July 2017	IGAG	For consultation and approval
4.0	Final	16 August 2017	CARM	Ratified.
5.0	Draft	November 2017	Compliance Officer	Updated to include RPSI regulations.
5.0	Draft	January 2018	Flo	2-week consultation period, no comments received.
5.0	Final	14 March 2018	IGAG	Approved
5.0	Final	April 2018	CARM	Virtual ratification
5.1	Final	June 2018	IG Assurance Lead	Minor changes to reflect the new Data Protection Act and some narrative throughout the document simplified
5.2	Final	December 2018	IG Assurance Lead	Minor changes to internal FOI handling process updated to streamline admin functions
5.3	Final	May 2019	IG Assurance Lead	Minor amendments

5.3	Final	September 2019	IGAG	Approved minor amendments
5.4	Final	March 2020	IGAG	Minor amendments, 2 flowcharts updated
5.5	Final	June 2021	IGAG	Minor amendments
5.6	Final	August 2021	IG Assurance Lead	Minor amendments
5.7	Final	January 2022	IGAG/IG Assurance Lead	Minor amendments
5.8	Final	March 2023	IG Assurance Lead	Minor amendments
5.8.1	Final	4 May 2023	CARM	Version 5.8 approved, version number updated to 5.8.1 to record this approval

Summary of Changes

- a) Executive Director job title updated in paragraphs 7.4 and 7.6.1 to Chief Finance Officer

EQUALITY ANALYSIS

<p>Has an Equality Analysis (EA) been completed?</p> <p>No <input type="checkbox"/></p> <p>The document will have no impact on people with any of the nine protected characteristics</p> <p>Yes <input checked="" type="checkbox"/> Form Ref: 46990, EA approved TBC (submitted 21 January 2022) <i>Include summary of any reasonable adjustments or actions required to avoid significant impact on patients, patients' families and employees and volunteers with protected characteristics.</i></p> <p>The policy makes reference to a commitment to meet communication needs of patients and their families and carers.</p> <p>The Equality Analysis for this policy is available upon request by contacting the Engagement Team via kchft.equality@nhs.net.</p> <p>NOTE: <i>Kent Community Health NHS Foundation Trust is committed to promoting and championing a culture of diversity, fairness and equality for all our staff, patients, service users and their families, as well as members of the public.</i></p> <p><i>Understanding of how policy decisions, behaviour and services can impact on people with protected characteristics' under the Equality Act 2010 is key to ensuring quality and productive environments for patient care and also our workforce.</i></p> <p>Protected characteristics: Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, Sexual Orientation.</p> <p><i>An equality analysis should be completed whilst a policy is being drafted and/or reviewed in order to assess the impact on people with protected characteristics. This includes whether additional guidance is needed for particular patient or staff groups or whether reasonable adjustments are required to avoid negative impact on disabled patients, carers or staff.</i></p>

Equality Analysis Liaise with the Engagement Team if support is required at kchft.equality@nhs.net

MONITORING COMPLIANCE AND EFFECTIVENESS OF THIS POLICY

Monitoring matrix:

What will be monitored?	How will it be monitored?	Who will monitor?	Frequency
FOI/EIR/RPSI Request response times	Reporting on the number of requests, those responded to within the timeframe and details of any breaches or complaints/internal reviews	IGAG	Quarterly
Staff awareness of the FOI, EIR and RPSI procedure and their role	Information Governance audits	IGAG	Quarterly
Review of FOI/EIR/RPSI staffing arrangements	Assessing the quarterly response times reports to IGAG; liaising with Compliance Officer	IGAG	Annually

Appendix 1 – Exempt information under Part II of the FOI Act

There are two types of exemption:

- Absolute, where there is no duty to confirm or deny, no duty to communicate and is not subject to the Public Interest Test;
- Qualified, which is subject to: the Public Interest Test; the duty to confirm or deny; (where it is in the public interest to do so) and subject to the duty to communicate.

Section 21, although an absolute exemption, does have a duty to confirm or deny to enable the applicant to be informed where the information is available.

The duty to confirm or deny does not apply where to do so would in itself release exempt information.

Qualified exemptions are sub divided into:

- Class
- Prejudice (would or would be likely to cause harm)

Section 36 requires the authority's 'qualified person' to give their 'reasonable opinion' that disclosure would or would be likely to cause the types of prejudice or inhibition listed under this section. The qualified person at NHS Foundation Trusts is the Chief Executive.

Absolute exemptions under the FOI Act are:

- [section 21 – information accessible to applicant by other means](#)
- [section 23 – information supplied by, or relating to, bodies dealing with security matters](#)
- [section 32 – court, inquiry or arbitration records](#)
- [section 34 – parliamentary privilege](#)
- [section 36 – prejudice to effective conduct of public affairs](#) (so far as relating to information held by the House of Commons or the House of Lords)
- [section 40 – personal information](#) (where disclosure may contravene the Data Protection Act 2018)
- [section 41 – information provided in confidence](#)
- [section 44 – prohibitions on disclosure](#)

Qualified exemptions which are subject to the public interest test are:

- [section 22 – information intended for future publication](#)
- [section 24 – national security](#)
- [section 26 – defence](#)
- [section 27 – international relations](#)
- [section 28 – relations within the United Kingdom](#)
- [section 29 – the economy](#)
- [section 30 – investigations and proceedings conducted by public authorities](#)
- [section 31 – law enforcement](#)
- [section 33 – audit functions](#)
- [section 35 – formulation of Government policy](#)
- [section 36 – prejudice to effective conduct of public affairs](#) (for all public authorities except the House of Commons and the House of Lords)
- [section 37 – communications with Her Majesty, etc. and honours](#)
- [section 38 – health and safety](#)
- [section 39 – environmental information](#)
- [section 42 – legal professional privilege](#)
- [section 43 – commercial interests](#)

Appendix 2 – Exceptions to the Duty to Disclose Environmental Information

All Environmental Information Regulations (EIRs) exceptions are subject to the public interest test:

- [Reg 12\(4\)\(a\)](#) - Does not hold that information when an applicant's request is received.
- [Reg 12\(4\)\(b\)](#) - Is manifestly unreasonable
- [Reg 12\(4\)\(c\)](#) - Is formulated in too general a manner (provided assistance has been given to the applicant with a view to re-framing the request)
- [Reg 12\(4\)\(d\)](#) - Relates to unfinished documents or incomplete data
- [Reg 12\(4\)\(e\)](#) - Would involve disclosure of internal communications
- [Reg 12\(5\)\(a\)](#) – Would adversely affect international relations, defence, national security or public safety
- [Reg 12\(5\)\(b\)](#) – Would adversely affect the course of justice, fair trial, conduct of a criminal or disciplinary inquiry
- [Reg 12\(5\)\(c\)](#) – Would adversely affect intellectual property rights
- [Reg 12\(5\)\(d\)](#) – Would adversely affect confidentiality of public authority proceedings when covered by law
- [Reg 12\(5\)\(e\)](#) – Would adversely affect confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest
- [Reg 12\(5\)\(f\)](#) – Would adversely affect interests of the person who provided the information
- [Reg 12\(5\)\(g\)](#) – Would adversely affect the protection of the environment
- [Reg 13](#) – Personal data

If the information requested is information on emissions, exceptions 12(5)(d) to (g) cannot be used