

SH NCP 52

Freedom of Information Policy

Version: 2

Summary:	This document represents Southern Health NHS Foundation Trust's intent to ensure compliance with the Freedom of Information (FOI) Act.	
Keywords (minimum of 5): <i>(To assist policy search engine)</i>	Freedom, information, FOI, request, RFI, EIR, ICO, publication scheme	
Target Audience:	Head of Legal & Insurance Services, FOI Officer, staff who are involved in responding to requests for information made under the Act, and the general public.	
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Author:	Sarah Pearson, Head of Legal & Insurance Services	
Sponsor:	Chris Gordon, Director of Performance, Quality and Safety	

Version Control

Change Record

Date	Author	Version	Page	Reason for Change
12.3.13	Louisa Felice	1	n/a	Amalgamation of the policies and procedures previously held by Hampshire Community Health Care (Hampshire PCT) and Hampshire Partnership NHS Foundation Trust.
22.10.15	Sarah Pearson	2	n/a	Review of policy highlighted a need to update and make minor amendments due to new legislation, regulations, and Information Commissioner's Office guidance. Review period also changed to 2 years following internal audit findings.
11.01.16	Barney Langrish	2	cover	Include general public in target audience
01.11.16	Sarah Pearson	2		policy reviewed no amendments required, review date extended for a further 3 years

Reviewers/contributors

Name	Position	Version Reviewed & Date
James Bourner Barney Langrish	Freedom of Information Officers	Version 2 on 27.8.15

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Freedom of Information Policy

1 Introduction

- 1.1 The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (EIR) provide for a general right of access to information held by public authorities. All information held by the Trust or on behalf of the Trust and in whatever format is captured by the legislation and both schemes are fully retrospective.
- 1.2 This Freedom of Information (FOI) Policy is a statement of Southern Health NHS Foundation Trust's (hereafter referred to as 'the Trust') responsibilities under the Freedom of Information Act ('the Act'). It should be read in conjunction with the FOI Procedure which details the processes staff should follow if they receive a request for information.
- 1.3 The aim of the policy is to ensure timely access to information held by the Trust in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal privacy, commercial sensitivity and where disclosure would not be in the public interest.
- 1.4 This policy and associated procedure should not be read in isolation and regard should be had to the Secretary of State's Code of Practice under Sections 45 and 46 of the Act. The Trust recognises that although it is not legally binding, failure to comply with the Code may lead to the failure to comply with the Act.

2 Scope

- 2.1 This policy applies to all information the Trust holds regardless of how it was created or received. It applies no matter what media the information is stored in and whether the information is on paper or held electronically. This may include documents, e-mails, minutes of meetings, correspondence, plans and all other types of recorded information. The Act is fully retrospective.
- 2.2 Requests made by individuals for information the Trust holds about themselves (ie their own personal information) are not covered by the FOI Act and fall outside the scope of this policy and associated procedure. The legislation covering these types of requests is the Data Protection Act (1998) and reference should be made to the relevant Trust policies.

3 Definitions

- 3.1 For the purposes of this policy the following definitions apply:

Data Protection Act (1998) (DPA)	An Act of Parliament which defines the UK law on the processing of data of living persons. The DPA defines
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eight data protection principles and is the main legislation governing the protection of personal data in the UK.

Environmental Information Regulations (EIRs)	Statute which came into force in 2005 and gives the right of access to environmental information held by public authorities.
Freedom of Information Act (2000) (FOI)	An Act of Parliament which came into force in 2005. The Act gives the public the “right to know” and allows them to request any information held by the Trust.
Information Commissioner’s Office (ICO)	An independent regulatory office reporting directly to Parliament and overseeing the DPA, the FOI Act, and the EIRs. The Information Commissioner is appointed by the Crown.
Publication Scheme	A list of information the ICO expects public authorities to regularly publish. All public authorities are required to produce and maintain a Publication Scheme.
Exemptions	Conditions which may be applied in circumstances in which requested data may be withheld from disclosure.
Absolute exemptions	Exemptions that do not require a public interest test to be undertaken
Qualified exemptions	Exemptions which require a public interest test to be completed before they are applied.
Public Interest Test	A public interest test must be applied when the use of a qualified exemption is proposed. The factors for and against the disclosure of requested information are considered. In order to apply the exemption, the factors against disclosure must be seen to outweigh the factors for disclosure.
Re-Use of Public Sector Information Regulations 2015 (RoPSI)	A set of regulations which came into force in July 2015 which give the public the right to re-use certain information accessed under FOI or EIR legislation.

4 Duties and Responsibilities

4.1 Trust Board and Chief Executive

4.1.1 The Trust’s Board will endeavour to be informed and assured that the Trust is compliant with the Freedom of Information Act. They will do this through escalation of the reports described in Section 5 below when required, through interim exception reporting and through the Director of Performance, Quality and Safety who is the sponsor of this Policy. The Chief Executive Officer is ultimately responsible for ensuring that the Trust is compliant with the relevant legislation and for informing the Board of major developments.

- 4.2 Forum with overarching responsibility for Freedom of Information
- 4.2.1 The forum which will have overarching responsibility for ensuring compliance with the Freedom of Information Act is the Quality, Improvement and Development (QID) Forum.
- 4.2.2 The QID Forum will have the opportunity to analyse the way in which requests for information have been handled when they are presented on a biannual basis by the Head of Legal & Insurance Services and minutes of this committee's meetings are communicated upwards to Board Committee level. The QID forum will also report downwards to local management level through the senior divisional directors who are members of the forum. This will facilitate organisational learning and drive improvements which have been identified through monitoring of compliance with the FOI Act.
- 4.2.3 Members of the QID Forum will also be responsible for contributing to and approving further development of this policy when it is up for review.
- 4.3 Head of Legal & Insurance Services
- 4.3.1 The duties and responsibilities of the Head of Legal & Insurance Services include:
- Overall management of FOI policy and procedure including managing and supporting the FOI Officer to deliver on their responsibilities outlined below
 - Taking a lead role in making decisions about the application of exemptions under the FOI Act
 - Leading on internal reviews in conjunction with other senior members of staff
- 4.4 FOI Officer
- 4.4.1 The FOI Officer is responsible for
- Administering all requests for information and re-use made to the Trust in line with the processes described in the Trust's Freedom of Information Procedure
 - Providing training to Trust staff on FOI and EIRs, and for being the main point of contact for both Trust staff and the public who require advice on FOI and/or EIRs.
 - Ensuring the Trust's Publication Scheme is regularly reviewed and updated as required, and for advising individual divisions/teams on the content of the scheme.
 - Maintaining appropriate performance statistics on FOI activity and submitting reports as requested by the QID Forum.
- 4.5 All Trust employees
- 4.5.1 All Trust staff are required to comply with the Act and to assist the Trust's FOI Officer if asked for information in accordance with the associated FOI Procedure. Staff who do not respond in a timely manner will have the request escalated to their relevant manager or Director. Failure to assist may result in the Trust failing to comply with the Act, which may lead to complaints and ultimately an investigation by the Information Commissioner.
- 4.5.2 A failure to adhere to this Policy and its associated procedures may therefore result in disciplinary action.

5 Operational Structure and Reporting

- 5.1 The Head of Legal & Insurance Services, reporting to the Associate Director of Quality Governance, will be responsible for the overall management of FOI Policy and Procedure
- 5.2 The Associate Director of Quality Governance will ensure that the Head of Legal & Insurance Services receives sufficient training, assistance and resources to meet the requirements of this policy.
- 5.3 The FOI Officer will report on FOI activity on a 6 monthly basis to the Trust's QID Forum. Interim reports will be provided for exception reporting as the need arises.

6 Publication Scheme

- 6.1 The publication scheme is a legal requirement of the Act, and encourages the proactive and routine publication of information by the Trust. The Trust aims to comply with the ICO publication scheme template. This lists information in seven categories that the ICO would expect a public authority to make available.
- 6.2 The Trust's publication scheme is available via the Trust's public website in the Freedom of Information section at www.southernhealth.nhs.uk.
- 6.3 In line with ICO best practice expectations, the Trust aims to maintain a disclosure log of previous FOI requests within the Trust's publication scheme. The Trust aims to update this disclosure log within reasonable timeframes and to include FOI responses which are in the public interest.

7 Receiving and responding to requests for information

- 7.1 The associated FOI Procedure sets out the processes for responding to requests under the Act. All Trust employees should familiarise themselves with the information in the procedure.
- 7.2 The Trust will ensure it meets the duty of a public authority to provide advice and assistance (as set out in Section 16 of the Act) to persons who propose to make, or have made, requests for information. Under the Act, the Trust has a duty "to confirm or deny". In the vast majority of cases, the Trust must either confirm or deny whether the information requested is held. Failure to do so may result in an investigation by the ICO.
- 7.3 The Trust may not have to comply with a request if it falls under an exemption allowed for in the Act (see section 8 and appendix 1). Otherwise all requests will be promptly acknowledged and responded to within 20 working days.
- 7.4 Where the Trust contacts an applicant to request reasonable clarification for their request, the Trust will close the request if no response is received from the applicant within 30 working days.
- 7.5 Information provided by the Trust in response to a request under the Act

remains copyrighted and can only be used for the applicant's personal use or for other specific uses permitted in the Copyright, Designs and Patents Act 1988.

- 7.6 If an applicant wishes to use information provided by the Trust for commercial purposes (including the sale of the information to a third party) they must seek written permission from the Trust under RoPSI. Granting permission may involve a licensing arrangement, which may incur a fee for the applicant.
- 7.7 The Trust will ensure it meets the Freedom of Information requirements set out in the Protection of Freedoms Act 2012, namely those relating to Datasets.
- 7.8 Applicants can request an internal review if they are not satisfied with the way their FOI, EIR or RoPSI request has been processed. The procedure and contact details for doing this will be provided in the letter of response.
- 7.9 Upon receipt of a request for a review, the FOI officer will prepare a summary of the Trust's handling of the request for consideration by the Head of Legal & Insurance Services. In the event of the Head of Legal & Insurance Services being directly involved with the initial response, the review will be undertaken by the most appropriate director. If, after the requestor has appealed to the Trust, they are still not satisfied, they may appeal to the Information Commissioner's Office, details of which will be provided in the final response.

8 Exemptions

- 8.1 The Act provides a small number of exemptions that may allow the Trust not to disclose requested information (see Appendix 1). The most likely exemptions to be used within the Trust are Section 40 (personal information), Section 21 (information available by other means), and Section 12 (cost of compliance is excessive).
- 8.2 Section 14 allows for a request to be exempt by classing it as "vexatious" or "repeated". The history of the request will be looked at in order to establish whether a request is vexatious or repeated. Vexatious requests are typically obsessive and cause unjustified distress and disruption. It is the request, not the requestor, which is deemed vexatious or repeated so future requests will not be automatically refused. A requestor asking for information that has already been supplied to them can be treated as repeated.
- 8.3 Any decision to use a Section 14 exemption will be agreed by the Trust's Head of Legal & Insurance Services. Requestors deemed as vexatious or repeated must be given the right to appeal this decision by being informed of their right to request an internal review. Once a requestor has been informed that their request is being treated as vexatious or repeated, the Trust is not obliged to provide any further response to any repeated requests for substantially similar information until a "reasonable interval of time" has passed.

9 Financial Impact & Resource Implications

- 9.1 The cost of responding to requests will be borne in full by the Trust except where the cost of completion exceeds that set by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
- 9.2 The Trust has the right to refuse to process any request for information where the costs associated with that production would exceed £450. This is calculated at the flat rate of £25 per hour and equates to 18 working hours. This is regardless of actual salary or job role. Not all activities associated with the production of the information will be chargeable. Where it is intended to apply this exemption, a breakdown of the work involved in complying with the request will be required by the FOI Officer, stating how the £450 limit would be reached, and by how far it would be exceeded.
- 9.3 The applicant may wish to pay for the request to go ahead. If the Trust agrees to this, a fees notice will be issued and payment required before the request is processed.

10 Release of Trust employee names and details

- 10.1 As a public authority, there is often recognised justification for the disclosure of employee names and work contact details. It is Trust policy that the Trust will release names of staff members whose name is already published on the Trust's public website without gaining additional consent.
- 10.2 In addition the Trust will routinely release the names of Directors, Department Heads and Senior Managers. For other staff, consent will normally be sought if release of names is thought to be appropriate. In some cases, the public interest in disclosure of personal details may be judged to outweigh an individual's preference to restrict such disclosure. The final decision on release of information remains with the persons responsible for FOI compliance within the Trust.
- 10.3 Those staff with public facing roles are more likely to have their names released. Personal contact details (i.e. home address, home telephone number, personal email address) will never be released in response to a request under the Act.
- 10.4 Requests for salary information will be answered by providing Agenda for Change pay bands. Where a person falls outside of Agenda for Change pay bands, their salary will be given in £10,000 bands. Requestors will be referred to the Annual Report if requesting information regarding Executive Director's salaries.

11 Consultation with Third Parties

- 11.1 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 of duty of confidence or where it constitutes "personal data" within the meaning of the DPA. Unless an exemption provided for in the Act applies in relation to any particular information involving third parties, the Trust will be obliged to disclose that information in response to a request. The

Trust will always try to consult with and gain the views of the third party in order to inform its decision on disclosure.

- 11.2 If the third party does not respond to the consultation, it does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Trust, not the third party to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

12 Public sector contracts

- 12.1 When entering into contracts the Trust will decline to include contractual terms which aim to restrict the disclosure of information held by the Trust or information relating to the contract itself. Unless an exemption provided for under the Act 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.

13 Training

- 13.1 There are no specific training needs associated with the FOI policy. Information will be provided to staff who are assisting in responding to a request for information through information leaflets. Ad hoc training will be provided for authors of documents which might be expected to be subject to requests for information.

14 Monitoring

- 14.1 The Head of Legal & Insurance Services oversees the procedure and will monitor that FOI requests are dealt with according to the guidance and timeframes set out in legislation.
- 14.2 The monitoring will take place on continual basis via the FOI tracker and dashboard. This provides real time information on timeliness of responding to requests and exemptions being applied. The tracker will record all aspects of a request including the requester's name and contact details, what information is requested, when it was completed and the duration of the request. Where a request is refused, the reasons for refusal will be recorded.
- 14.3 The tracker will ensure consistency in dealing with similar requests and identify repeated, duplicate or vexatious requests. It will also identify recurring requests for the same or similar information not already published and allow the Trust to consider whether such information should be routinely published on the website or in another medium.
- 14.4 Monitoring information will be reported to the QID Forum via the reports outlined in Section 5 and if any shortfalls are identified there will be an associated plan of action put into place.
- 14.5 Duties will be monitored through the 1:1 and appraisal processes in operation across the Trust. The Head of Legal & Insurance Services will escalate any

concerns they have about the way any of the service managers or frontline staff are carrying out their duties to the respective Divisional Director who will again monitor performance via monthly 1:1 and the yearly appraisal process.

15 Associated Documentation

- Freedom of Information Procedure
- Policy for Data Protection, Caldicott and Confidentiality
- Access to Personal/Clinical Records Procedure

Appendix 1 A guide to the most commonly used exemptions

The Freedom of Information Act 2000 has a number of exemptions that permit public authorities to withhold some or all of the information requested where a justifiable reason exists.

A full list of exemptions can be found on the Information Commissioner's website: <http://www.ico.gov.uk>

Section 12 Excess of appropriate costs & limits (18 hrs / £450)

S12 allows public authorities to refuse to answer requests for information if the cost of complying would exceed the appropriate limit prescribed in the Fees Regulations.

Section 21 Information reasonable accessible to the applicant by other means

S21 will apply if information is included on a public authority's publication scheme or if already in the public domain – is the information readily available on the Trust's public website?

Section 22 Information intended for future publication

S22 exempts information requested if it is intended for future publication. S22 may apply even if the specific date has not yet been determined but the proposed publication timetable must be reasonable. This exemption will only apply if the Trust has decided, prior to receipt of the request, to publish the information concerned. S22 is also subject to a public interest test.

Section 40 Personal information

S40 concerns personal data within the meaning of the Data Protection Act 1998 (DPA). S40 applies to 2 distinct types of requests for information:

1. if a request asks for the personal data of the applicant, the information is exempt; and
2. if a request asks for the personal data of someone else then it will be exempt if its disclosure would contravene any of the data protection principles of the DPA

Section 43 Commercial interests

S43 exempts information whose disclosure would be likely to prejudice the

commercial interests of any person:

1. S43 protects not only the commercial interests of third parties but also the commercial interests of the public authority that holds the information;
2. Public authorities will need to bear in mind that the commercial sensitivity of information will usually decrease with time; and
3. S43 is subject to the public interest test

Appendix 2 Equality Impact Assessment

Name of policy/service/project/plan:	FOI Policy
Policy Number:	SH NCP
Department:	Corporate (Governance)
Lead officer for assessment:	Head of Legal & Insurance Services
Date Assessment Carried Out:	22 October 2015

1. Identify the aims of the policy and how it is implemented.	
Key questions	Answers / Notes
Briefly describe purpose of the policy including <ul style="list-style-type: none"> • How the policy is delivered and by whom • Intended outcomes 	This document represents Southern Health NHS Foundation Trust's intent to ensure compliance with the Freedom of Information (FOI) Act.
Provide brief details of the scope of the policy being reviewed, for example: <ul style="list-style-type: none"> • Is it a new service/policy or review of an existing one? • Is it a national requirement? 	This policy applies to all information the Trust holds regardless of how it was created or received. It applies no matter what media the information is stored in and whether the information is on paper or held electronically. This is a review of an existing document and adherence to the Act is a legal requirement.

2. Consideration of available data, research and information		
<p>Monitoring data and other information involves using equality information, and the results of engagement with protected groups and others, to understand the actual effect or the potential effect of your functions, policies or decisions. It can help you to identify practical steps to tackle any negative effects or discrimination, to advance equality and to foster good relations.</p> <p>Please consider the availability of the following as potential sources:</p> <ul style="list-style-type: none"> • Demographic data and other statistics, including census findings • Recent research findings (local and national) • Results from consultation or engagement you have undertaken • Service user monitoring data • Information from relevant groups or agencies, for example trade unions and voluntary/community organisations • Analysis of records of enquiries about your service, or complaints or compliments about them • Recommendations of external inspections or audit reports 		
	Key questions	Data, research and information that you can refer to
2.1	What is the equalities profile of the team delivering the service/policy?	n/a
2.2	What equalities training have staff received?	Mandatory training
2.3	What is the equalities profile of service users?	n/a

2.4	What other data do you have in terms of service users or staff? (e.g results of customer satisfaction surveys, consultation findings). Are there any gaps?	n/a
2.5	What engagement or consultation has been undertaken as part of this EIA and with whom? What were the results?	n/a
2.6	If you are planning to undertake any consultation in the future regarding this service or policy, how will you include equalities considerations within this?	n/a

In the table below, please describe how the proposals will have a positive impact on service users or staff. Please also record any potential negative impact on equality of opportunity for the target:

In the case of negative impact, please indicate any measures planned to mitigate against this.

	Positive impact (including examples of what the policy/service has done to promote equality)	Negative Impact	Action Plan to address negative impact			
			Actions to overcome problem/barrier	Resources required	Responsibility	15.1 Target date
Age	n/a	n/a	n/a	n/a	n/a	n/a
Disability	n/a	n/a	n/a	n/a	n/a	n/a
Gender Reassignment	n/a	n/a	n/a	n/a	n/a	n/a
Marriage and Civil Partnership	n/a	n/a	n/a	n/a	n/a	n/a
Pregnancy and Maternity	n/a	n/a	n/a	n/a	n/a	n/a
Race	n/a	n/a	n/a	n/a	n/a	n/a
Religion or Belief	n/a	n/a	n/a	n/a	n/a	n/a
Sex	n/a	n/a	n/a	n/a	n/a	n/a
Sexual Orientation	n/a	n/a	n/a	n/a	n/a	n/a

List in the table below level of engagement / consultation with target groups:

Target Group	√	Engagement/Consultation carried out
Service Users & Carers		n/a
Staff		Consultation carried out when previous versions were written for HCHC and HPFT as this policy simply amalgamates those two policies, no further consultation deemed necessary.
General Public		n/a
PCT Commissioners		n/a
Local Authorities		n/a
Voluntary Organisations		n/a
Other Stakeholders		n/a