

SH NCP 53

<h1 style="margin: 0;">Freedom of Information Procedure</h1> <p style="margin: 10px 0 0 0;">Version: 2</p>

Summary:	Guidance for staff on the management of Freedom of Information requests received by the Trust.	
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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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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		procedure 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 Procedure

1 Introduction

- 1.1 This Procedure should be read together with the Trust's Freedom of Information (FOI) Policy. It aims to provide guidance on the processes that staff should follow when dealing with a request for information made under the Freedom of Information Act (2000), hereafter referred to as 'the Act', and includes:
- Guidance for staff so they can recognise a request for information under the Act and know where to refer the request so it can be recorded and responded to.
 - Procedures the FOI Officer will follow for recording and monitoring progress of FOI requests and for transferring requests where necessary.
 - Procedures for carrying out internal review of decisions.
 - Procedure to be followed when withholding information under Section 36.

2 Guidance for staff receiving requests

- 2.1 The Freedom of Information Act gives anyone the right to make a written request (including an e-mail request) to see information held by the Trust. If the information is held by the Trust, it will usually be disclosed. Any information can be requested, no matter how old it may be. This includes reports, minutes of meetings, activity data, financial data, information contained within emails or correspondence etc. There are only a small number of exemptions provided for under the Act which allow us to withhold information. These are explored in more detail in the FOI Policy.
- 2.2 Requests do not have to specifically mention the Act, nor do they have to state why the applicant requires the information. The Trust must respond to Freedom of Information requests within 20 working days and if it does not, it may be liable for penalties.
- 2.3 Any information produced by a third party but held by the Trust is covered by the Act.
- 2.4 Requests for information you normally provide
If someone asks you for information that you have to hand and normally give out (e.g. an information leaflet, routine letter, etc.), you should continue to do so. These requests do not need to be logged or dealt with under the Freedom of Information Act.
- 2.5 Requests for other information
Any Trust employee may be contacted by an applicant wishing to make an FOI request. You should direct them to the FOI Officer on telephone number 02380 874662 or via foi@southernhealth.nhs.uk.

If you receive a letter requesting information that you do not routinely give out, you must forward it to the FOI Officer immediately on receipt either by scanning and emailing to the above address or by posting on the day of receipt to: FOI Officer, 6 Sterne Rd, Tatchbury Mount, Calmore, Southampton SO40 2RZ.

The date of receipt for the purposes of the 20 day time limit is the date the request is received in the Trust, not the date it is passed to the FOI officer, so you must act quickly.

- 2.6 FOI requests will often be made to the FOI Officer directly and the first that staff will be aware of them is when approached by the FOI Officer for assistance with identifying and collating the information that has been requested. Due to the tight statutory timeframes for compliance, it is obligatory that all deadlines given by the FOI Officer are met and that any issues identified that might prevent the deadlines being met are notified to them at the earliest opportunity so that appropriate plans can be put in place to ensure compliance.
- 2.7 If you have not responded by the date requested by the FOI Officer, the matter will be escalated to your relevant manager or Director.
- 2.8 Under section 16 of the Act, the Trust has a duty to provide advice and assistance to applicants. The Trust will ensure it meets the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so. If you cannot provide the exact information asked for, you may be able to suggest an alternative. You should discuss this with the FOI officer.
- 2.9 If you determine that the Trust does not hold the information, but you know which public authority does hold the information (ie, another Trust, the PCT, the council, etc) you should inform the FOI officer as this part of the request may be able to be transferred.
- 2.10 If you feel that the information requested should not be disclosed, you will need to provide the information to the FOI Officer in any event, outlining your reasons for wanting it to be withheld. The FOI Officer will then determine whether there are any exemptions under the Act that would allow the information to be withheld from the applicant (see 3.7 below). Staff should be aware that several exemptions are subject to the public interest test and that the bias is largely in favour of disclosure.
- 2.11 Deleting or destroying information after a request has been made under the FOI Act is likely to be viewed as a criminal offence. To delete/destroy information in this way will also be considered to be gross misconduct under the Trust's Disciplinary Policy and Procedure.

3 Procedure FOI Officer will follow

- 3.1 The FOI Officer will deal with requests in accordance with the Act where:
 - **The request is made in English.** The Trust will consider requests in other languages on a case-by-case basis. We may ask that the request be reframed in English.
 - **The request is made in writing** – includes emails and faxes. If an applicant attempts to make a request over the telephone, they will be informed how to make their request in writing
 - **The request gives the name and return address** (including an email address) **of the applicant.** We recognise the right of people outside the UK to make requests and receive information.
 - **The request adequately describes the information requested**

- 3.2 The FOI Officer will maintain a system to record and respond to all FOI requests (FOI Tracker). This system will be used for recording details of the requests and reporting on performance in meeting statutory timescales as well as other information such as exemptions applied.
- 3.3 Once a written request is received by the FOI Officer, the date received and details of the request will be logged on the tracker. It is best practice to acknowledge receipt of all requests. The Trust FOI officer will endeavour to do this within 48 hours of receiving the request.
- 3.4 If the request is not sufficiently clear and does not adequately describe the information being requested, the FOI Officer will ask for clarification and the 20 day clock will stop until clarification has been received.
- 3.5 If the FOI Officer asks an applicant for clarification and does not receive a response within 30 working days the FOI Officer will close the request and notify the applicant.
- 3.6 A check will be made as to whether the information requested is already available in the Trust's online publication scheme or elsewhere in the public domain. If it is, a response will be sent to the applicant with a link to the relevant location. If the information is not available through the publication scheme, and the FOI officer does not already hold the information, the request will be passed to the relevant area to locate and provide the information requested.
- 3.7 Having identified the area most likely to hold the information requested, the FOI Officer will make the relevant Director aware as well as the relevant manager or locally agreed FOI lead. The relevant person(s) will be asked to search electronic and paper records for the information and supply copies of that information to the FOI Officer within an agreed period of time.
- 3.8 Having considered the information collated, the FOI Officer will then advise the relevant manager/director if any of the exemptions under the Act are applicable. Where an exemption may be applicable, the final decision about disclosure will be made by the FOI Officer together with the Head of Legal and Insurance Services.
- 3.9 Where information has been deleted from an electronic record prior to a request being made the FOI Officer will ask IT Service Desk to check that the information has been fully deleted from the network and is no longer recoverable, either from the system or back-up tapes/discs.
- 3.10 The final response will be sent to the applicant within 20 working days of receipt. The first day will be the first working day after the request is received. If the information is exempt from disclosure, the applicant will be informed (in writing) which exemption applies. They will be given the right to challenge the Trust's decision through an internal review (see Section 5).
- 3.11 Where requests are known to have been made by members of the Press the response will be copied to the communications department.
- 3.12 Requests for re-use under the Re-Use of Public Sector Information Regulations 2015 (RoPSI) will be processed and handled by the FOI Officer using the established FOI process. Any requests for internal review of RoPSI requests will also use the FOI internal review process.

- 3.13 The FOI Officer will aim to place the final responses to requests on to the disclosure log, on the Trust's publication scheme, unless appropriate exemptions apply.
- 3.14 The FOI Officer will identify if the dataset provisions established by the Protection of Freedoms Act 2012 apply to any FOI requests and, if applicable, will ensure our compliance with them. This will include leading on licensing and costing discussions in addition to leading on the publication of the datasets on our publication scheme.
- 3.15 A flowchart outlining the steps described above can be found at Appendix 1.

4 Transferring a request

- 4.1 A request can only be transferred where the Trust receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If the Trust is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority).
- 4.2 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 with his/her request. Under section 45 the Trust can suggest the applicant applies to another authority and provide the contact details, or consult another authority to confirm they hold the information and then (with the applicant's consent) transfer the request to the other authority. The requestor should be informed the transfer has taken place. The time limit for responding applies from the date of transfer.

5 Internal Reviews

- 5.1 Applicants can request an internal review if they are not satisfied with the way their request has been processed. The procedure and contact details for doing this will be provided in the letter of response. All complaints or requests for internal review must be made in writing (letter, email or fax).
- 5.2 Upon receipt of a request for a review, the FOI Officer will log the request and will provide a written acknowledgement to the applicant together with an indication of the timescale for completing the internal review and notifying them of the outcome. There is no statutory timescale for conducting an internal review and informing the complainant. However, the Information Commissioner has recommended that reviews should be dealt within 20 working days from the date of the request for the review, where possible. The Trust will endeavour to deal with requests for review within this timescale.
- 5.3 The FOI Officer will also 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.
- 5.4 The internal reviewer should be satisfied that all the relevant information was located in considering the request and was provided to him/her. The reviewer can and should request a further search of electronic and paper files and any other records if he or she is not satisfied that all the relevant information has been provided. They may also find it helpful to speak to the FOI Officer and any other member of staff who was

involved in the decision making process. The reviewer may also wish to seek legal advice or other specialist advice. Any advice requested and received should be documented by the internal reviewer.

- 5.5 The FOI Officer will communicate the findings of the internal review to the applicant in writing within the originally agreed timeframe. 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 also be provided in the final response.

6 Section 36 decisions

- 6.1 Under the Act, only the designated qualified person may decide to withhold information under Section 36 (Prejudice to Effective Conduct of Public Affairs). The Chief Executive Officer is the Qualified Person for the Trust and the FOI Officer will involve them in the process if it is felt that this exemption should be applied.
- 6.2 If a request for an internal review is received which involved a Section 36 decision, the Chief Executive Officer will be expected to consider their decision again, taking into account the views of the complainant. As it is a qualified exemption, a suitable senior member of the Trust Board such as the Trust Chair, can also be asked to review the public interest arguments.

7 Other guidance

This procedure is intended as a brief guide to the arrangements made in the Trust to comply with the legislation. Further information and guidance is available from the following sources:

- The Trust's Freedom of Information Officer – foi@southernhealth.nhs.uk

Southern Health NHS Foundation Trust
Tatchbury Mount
6 Sterne Road
Calmore
Southampton
SO40 2RZ

- The Information Commissioner's Office – www.ico.gov.uk

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

Appendix 1 – FOI request process flow diagram

