

FREEDOM OF INFORMATION POLICY Including Environmental Information Regulations	
Summary statement: How does the document support patient care?	The Policy supports transparency of activity undertaken by the Trust through the provision of publicly requested information.
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Responsible Person:	Company Secretary
Author:	Company Secretary & Freedom of Information Manager
For use by:	Policy applies to All Staff
Purpose:	<i>To comply with the legal requirements of the Freedom of Information Act and Environmental Information Regulations</i>
This document supports: <i>Standards and legislation</i>	Compliance with the Freedom of Information Act and Environmental Information Regulations, and supports the Trust being “well led”
Key related documents:	EU General Data Protection Regulation Health Records Policy Information Governance Handbook PALS and Complaints Policy Trust Publication Scheme
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4.0	June 2024	Roger Gustafson – Freedom of Information Manager & Glen Palethorpe - Company Secretary	Live	Minor changes reflective of revised guidance from ICO and minor typographical changes.

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1. Policy Statement

University Hospitals Sussex NHS Foundation Trust is committed to openness and transparency about the way it carries out its work. The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and the associated Codes of Practice issued by the Cabinet Office pursuant to sections 45 and 46, and the Environmental Information Regulations 2004 and Code of Practice pursuant to regulation 16.

2. Definitions

Absolute exemption: Under the FOIA some information held by the Trust does not need to be provided to an applicant because a relevant exemption applies. An absolute exemption means there is no obligation to release the requested information and it does not require the public authority to carry out a public interest test.

'The Act': Freedom of Information Act 2000

Applicant (or Requester): The individual(s), group or organisation requesting access to information under the FOIA or EIR.

Data Protection Act 2018 (DPA/DPA 2018): The Data Protection Act 2018 is an Act of Parliament which updates data protection laws in the UK. It is a national law which complements the UK General Data Protection Regulation (GDPR) and replaces the Data Protection Act 1998.

Data Protection Principles: The Data Protection Act 2018 and the UK General Data Protection Regulation set out seven key principles that should lie at the heart of our approach to processing personal data.

Dataset: A dataset is a collection of factual information in electronic form relevant to the services and functions of a public authority. Where datasets are disclosed in response to a FOIA request, they should where reasonably practicable, be made available in a re-usable, electronic form via the Trust's publication scheme.

Duty to confirm or deny: The FOIA and EIR require a public authority to inform a requester whether it holds the information specified in the request - this is known as 'the duty to confirm or deny'.

Environmental Information Regulations 2004 (EIR/the Regulations): The legislation that provides a statutory right of access to environmental information held by public authorities.

Exceptions: Similar to FOIA exemptions, the Environmental Information Regulations have 14 exceptions that prevent the disclosure of information.

Exemptions: Under the FOIA some information held by the Trust does not need to be provided to an applicant because one or more of 23 exemptions outlined in the Act apply.

Fees notice: A written notification issued by the Trust to an applicant stating that a fee is payable, usually when information cannot be provided within the 'appropriate limit' outlined in the Freedom of Information and Data Protection (Appropriate Limit and Fees)

Regulations 2004 and the Trust has applied section 12 [*cost limit*].

Fees Regulations: Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, which are national regulations that prohibit fees for certain types of requests, set an upper limit on amounts that the Trust may charge and prescribe how any fees are to be calculated.

Freedom of Information Act 2000 (FOI/FOIA/the Act): The legislation that provides a statutory right of access to information held by public authorities.

UK General Data Protection Regulation (GDPR): The GDPR was a regulation in EU law on data protection and privacy for all individuals within the European Union (EU) and the European Economic Area (EEA). The GDPR is retained in UK domestic law now the Brexit transition period has ended. The 'UK GDPR' sits alongside an amended version of the Data Protection Act 2018.

Information: In the context of FOI and EIR, information is defined as each item of material held by the Trust in paper or electronic form and includes documents, computer files, letters, emails, photographs, notes and sound or video recordings.

Information Commissioner's Office (ICO): The Information Commissioner oversees and enforces the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the UK General Data Protection Regulation and Data Protection Act 1998.

Model publication scheme: A document from the Information Commissioner's Office specifying the 7 classes of information that public bodies are expected to routinely make available to the public.

Open Government License (OGL): The Open Government Licence is an open licensing model and tool for public sector bodies to license the re-use of their information and data easily. It consists of a simple set of terms and conditions to which public authorities simply point as the relevant licence.

Personal data: The UK GDPR defines 'personal data' as "any information relating to an identified or identifiable natural person ('data subject').

Public authority: Authorities with a public function, such as the Trust.

Public Interest Test (PIT): A test used to determine whether disclosure of information is in the greater public interest. The test must be carried out where the Trust is considering applying a 'qualified' exemption under the FOIA or exceptions under the EIR.

Qualified exemption: Under the FOIA some information held by the Trust does not need to be provided to an applicant because a relevant exemption applies. Information to which a qualified exemption applies requires the Trust to carry out a public interest test.

Re-use Public Sector Information (RPSI): The Re-use of Public Sector Information Regulations 2015 allows the public to apply to re-use information held by public authorities. The ICO encourages public authorities to use the Open Government License (OGL) model.

Special Category Data: Special category data is personal data that needs more

protection because it is sensitive and includes data that reveals or concerns the following: racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic or biometric data, physical or mental health, sex life or sexual orientation. Personal data about criminal allegations, proceedings or convictions are also treated as sensitive, but separate processing rules apply.

3. Introduction to the Freedom of Information Act

3.1 Background

3.1.1 The Freedom of Information (FOI) Act 2000 demonstrates a commitment to greater openness in the public sector. It enables members of the public to find out more about the activities and the decisions of public authorities and to ensure that services are delivered appropriately and efficiently. The Act gives the public a general right of access to almost all types of recorded information held by public authorities. The Act came into effect on 01 January 2005.

3.1.2 The Act imposes two important statutory obligations on public authorities:

- to provide the information it holds which answers the terms of a request, subject to certain conditions and exemptions; and
- to put in place a Publication Scheme, which sets out what information will be made available to the public proactively and how it can be obtained.

3.1.3 Two fundamental principles underlying the Act promote its democratic purpose:

- the presumption in favour of disclosure; and
- the applicant/motive blind principle.

3.1.4 The practical result of these principles is that:

- people have a right to know about the activities of public authorities, unless there is a good reason for them not to.
- requesters do not have to justify their request or explain why they want the information; all requests should be treated equally.
- disclosure is not just to the requester but to the wider world; public authorities should therefore consider the impact of disclosure based on the assumption that it is entering the public domain forever and for anyone to access.

3.1.5 University Hospitals Sussex NHS Foundation Trust recognises the importance of the Act and it will ensure that appropriate systems are in place to publicise what recorded information is held by the Trust and how this information can be accessed by the general public.

3.2 The FOI Act

3.2.1 The main features of the FOI Act are:

- a general right of access to information held by public authorities;
- sets out exemptions from the duty to provide information;

- places a requirement on public authorities to exercise discretion in determining whether exemptions are engaged, but also the extent to which they may apply (e.g. where the balance of public interests lie);
- places a duty on every public authority to adopt and maintain a Publication Scheme;
- public authorities must make arrangements for enforcement and appeal;
- places a duty to provide advice and assistance to people wishing to request information ;
- public authorities must make arrangements in respect of costs and fees;
- the Act created a new Information Tribunal and Office of the Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice; and
- outlines codes of practice issued by the Cabinet Office in respect of section 45 - FOI Code of Practice and section 46 - Code of Practice on the Management of Records.

3.2.2 In fulfilling its obligations under the Act, the Trust will:

- provide reasonable advice and assistance to requesters;
- comply with its duty to confirm or deny whether information is held and provide it within 20 working days where appropriate to do so;
- issue a Fees Notice if it is decided that a fee will be raised for the provision of the information;
- transfer requests to other public authorities where appropriate;
- consult with third parties likely to be affected by disclosure;
- include language in contracts relating to FOIA obligations;
- where appropriate publish datasets disclosed via the FOIA;
- keep applicants informed of any delays to processing, including when additional time is required to consider the public interest test associated with qualified exemptions;
- train staff so they recognise different request regimes;
- maintain a central pool of staff with FOI expertise and understanding how FOI/EIR/DPA may affect disclosure; and
- keep a record of all applications where some or all of the requested information is withheld.

3.2.3 The Trust does not need to disclose information that is exempt from disclosure under the Act. A full list of exemptions is provided in **Appendix A**. However, except in the case of absolute exemptions, the Trust will apply a Public Interest Test to determine whether the public interest in disclosing information outweighs the public interest in maintaining the confidentiality of the information. If so, the information will be disclosed.

3.2.4 FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. There is no duty under the Act to create new information for the purpose of answering a request, but in some cases the manipulation of data may be required. Where a degree of skill or judgment needs to be applied to existing data, then it may not be 'held' under the Act. The Act does not oblige public authorities to retain information which is no longer useful to the authority.

3.2.5 The FOI Act is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information

and enforcement notices and, if needed, initiate court proceedings to ensure compliance.

4. Introduction to the Environmental Information Regulations

4.1 Background

4.1.1 The Environmental Information Regulations 2004 were originally derived from European law and came into effect on 01 January 2005. UK Parliament introduced them to implement a European Council Directive, the source of which is an international agreement called the 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters'. It was adopted in Aarhus, Denmark on 25 June 1998 and is known as 'the Aarhus Convention'.

4.1.2 The principle behind the legislation is that giving the public access to environmental information will encourage greater awareness of issues that affect the environment. Greater awareness helps increase public participation in decision-making, makes public bodies more accountable and transparent, and it builds public confidence and trust in them.

4.1.3 University Hospitals Sussex NHS Foundation Trust recognises the importance of the Regulations and will ensure that appropriate systems are put in place to publicise what environmental information is held by the Trust and how this information can be accessed by the general public.

4.2 The EIR

4.2.1 The main features of the EIR are:

- a general right of access to information held by public authorities;
- there is an express presumption in favour of disclosure;
- public authorities are required to proactively publish environmental information;
- sets out exceptions from the duty to provide information;
- public authorities must make arrangements for enforcement and appeal;
- public authorities must make arrangements in respect of costs and fees; and
- places a duty to provide advice and assistance to people wishing to request environmental information.

4.2.2 The Regulations give the public a right of access to information about the activities of public authorities that relate to or affect the environment, unless there is good reason for them not to have the information. This is sometimes referred to as a presumption in favour of disclosure.

4.2.3 Environmental information includes any information in written, aural, electronic or any other material form about:

- the state of the elements of the environment, such as air, water, soil and land;
- factors such as substances, energy, noise, radiation or waste (including

radioactive waste), emissions, discharges and other releases into the environment

- measures such as policies, legislation, plans, programmes, environmental agreements and activities likely to affect environmental elements or activities designed to protect those elements;
- cost benefit and other economic analyses and assumptions used in environmental decision-making activities; and
- the state of human health and safety, including the contamination of the food chain and conditions of human life in as much as they may be affected by the elements of the environment.

4.2.4 Unlike the Freedom of Information Act, the Environmental Information Regulations list a series of ‘exceptions’, rather than exemptions, where information may be refused. There is one ‘absolute’ exception and this applies to personal information, which means that the requested information does not need to be disclosed in any circumstances. The other exceptions are all subject to a public interest test. A full list of exceptions are provided in **Appendix A**.

4.2.5 When a request covers information that is environmental and some which is not, it may be necessary to apply both regimes to the request. Where the requirements of Environmental Information Regulations differ to that of the Freedom of Information Act, these are highlighted under the relevant sections of this policy.

4.2.6 In fulfilling its obligations under the Regulations, the Trust will:

- provide reasonable advice and assistance to requesters;
- comply with its duty to confirm or deny whether information is held and provide it within 20 working days where appropriate to do so;
- transfer requests to other public authorities where appropriate;
- as a matter of good practice consult with third parties likely to be affected by disclosure;
- include language in contracts relating to EIR obligations;
- provide training to staff so they are familiar with EIR requirements; and
- keep a record of all applications where some or all of the requested information is withheld.

4.2.7 The EIR does not cover records management matters, however, FOIA section 46 Code of Practice provides this guidance.

4.2.8 Similar to the FOI Act, the EIR is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.

4.3 Main Differences between FOI and EIR

4.3.1 The main differences between the FOIA and EIR are:

- the deadline for responses may be extended to a maximum of 40 working days where the information sought is both complex and voluminous; under the FOIA such an extension is only possible when qualified exemptions are applied.

- there is an express presumption in favour of disclosure.
- the EIR list a series of ‘exceptions’, rather than exemptions under the FOIA, where information may be withheld.
- there is a possibility of oral requests.
- unlike the FOIA, the scope of information held may include information held on behalf of another person (if held for the Trust’s own purposes).
- there are no absolute exceptions other than Regulation 13 relevant to personal data of 3rd parties; otherwise all exceptions are subject to a public interest test, unlike the FOIA where the PIT only applies to qualified exemptions.
- the duty to disclose generally overrides other domestic enactments, unlike the FOIA which provides exemption section 44 [*prohibitions on disclosure*].
- public interest factors against disclosure can be aggregated for EIR exceptions but cannot under the FOIA.
- there is no cost limit allowing refusal like Section 12 of the FOIA, but the exception Regulation 12(4)(b) [*manifestly unreasonable request*] is a partial alternative.

5. Scope

5.1.1 This document provides a framework to ensure that the Trust complies with the requirements of the Act and Regulations. It applies to all staff working for or on behalf of University Hospitals Sussex NHS Foundation Trust, including Non-Executive Directors, contractors, temporary staff, and all permanent employees. It is of particular relevance to the Company Secretary and Assistant to the Company Secretary; Freedom of Information Manager, Deputy Freedom of Information Manager and FOI Assistants (FOI Team); the Freedom of Information Leads and managing Directors; the Executive Team.

5.1.2 The objectives of the policy are to:

- inform Trust staff of their duties under the Act and Regulations; and
- provide guidance to staff involved in processing requests and providing information.

5.1.3 Information is defined as each item of material held by the Trust in paper or electronic form and includes documents, computer files, letters, emails, photographs, notes and sound or video recordings.

6. Roles and Responsibilities

6.1 Corporate Responsibilities

6.1.1 University Hospitals Sussex NHS Foundation Trust will:

- recognise its responsibility under FOI/EIR to provide a general right of access to information it holds;
- publish and maintain a Publication Scheme;
- proactively publish environmental information;
- provide clear lines of reporting, supervision and approval to ensure compliance; and

- support a comprehensive Records Management strategy that compliments FOI/EIR.

6.1.2 The Chief Executive Officer has overall responsibility for ensuring the Trust is responsive and acts upon the requirements of the FOIA/EIR.

6.1.3 The Company Secretary and Freedom of Information Manager are responsible for overseeing the implementation of this Policy and will establish systems, procedures and operational processes to support this function as necessary.

6.1.4 Under the terms of FOI/EIR it is an offence to alter, deface, block, erase, destroy or conceal any information from disclosure which is held by the Trust.

6.2 Company Secretary and FOI Manager Responsibilities

6.2.1 The Company Secretary in conjunction with the FOI Manager will:

- oversee the implementation of this policy and the systems and procedures that support it;
- ensure there is always one member of staff with overall operational responsibility for FOI/EIR available within standard business hours;
- provide relevant training for all staff with FOI/EIR responsibilities;
- establish and maintain a database for logging and tracking requests;
- provide advice and support to managers and FOI Leads responsible for processing requests;
- act as the channel through which legal advice is obtained and maintain records of this;
- provide advice and assistance to members of the public making requests;
- promote FOI/EIR awareness throughout the organisation;
- ensure organisational compliance with the Act and Regulations;
- support the Trust's online Publication Scheme and Disclosure Log; and
- appoint a lead officer to carry out internal reviews/appeals as required.

6.2.2 The Company Secretary will act as a conduit between the Executive Team and the FOI Manager regarding high level requests for information and may be required to assist with the Internal Review process.

6.2.3 The FOI Manager will produce a FOI Annual Report that outlines the Trust's performance to be submitted to the Information Governance and Executive Committees as required.

6.2.4 The Company Secretary will keep the FOI Team informed of any changes to the managing Directors across the Trust.

6.3 Director and FOI Lead Responsibilities

6.3.1 All Directors are responsible for ensuring that they nominate a senior person within their team to act as a single point of contact for FOI/EIR requests – to be known as the FOI Lead for their area.

6.3.2 Nominated FOI Leads will be responsible for:

- forwarding requests onto the appropriate staff within their service for response;
- advising the FOI Office as soon as possible when a request requires clarification;
- advising the FOI Office of requests which may be subject to an exemption/exception or where there are concerns regarding the disclosure of information;
- ensuring information held within their service is provided to the FOI Office in line with timescales outlined by the FOI/EIR;
- ensuring that FOI/EIR procedures are followed within their service;
- securing Director approval regarding information to be disclosed before sending to the FOI Office;
- liaising with the FOI Office as required;
- promoting FOI within their service area;
- maintaining up to date information within the Publication Scheme for their area;
- ensuring FOI/EIR requests received within their team are referred immediately to the FOI Office; and
- providing assistance to the FOI Office with investigations into appeals and complaints.

6.3.3 All Directors within the Trust must make provision to approve draft responses to requests relating to their service area in a timely manner which allows FOI/EIR statutory deadlines to be met. This may be delegated to a member of staff within their team where appropriate.

6.3.4 All Directors should ensure that records and information for their area are maintained in accordance with the Trust's Records Management policies and procedures, to enable easy identification and retrieval when required.

6.3.5 All Directors must consider recommendations made following an appeal into the processing of a request by their area.

6.3.6 The Trust's Environmental Sustainability leads and the FOI Manager will oversee compliance in relation to requests that fall under the Environmental Information Regulations.

6.3.7 All Directors should ensure this policy is communicated and implemented within their area of responsibility.

6.4 Employee Responsibilities

6.4.1 All staff are obliged to adhere to this Policy and have the following responsibilities:

- ensure that any requests for information received within their work areas not considered 'ordinary business', are immediately referred to the FOI Office for processing. This can be done by forwarding correspondence to UHSussex.foi@nhs.net;
- complete the online mandatory Information Governance training in which there is a section on FOI and undertake any additional FOI/EIR training which the Trust deems to be relevant to their role;
- observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records; poor

records management practices may lead to an inability to comply with requirements of the FOIA/EIR;

- support FOI/EIR procedures and provide information when requested from the FOI Office within the timescales outlined in this policy;
- be aware that ultimately the general public may have access to any piece of information held within the Trust and as such, staff should pay due regard to how they record information as part of their normal duties; and
- when staff are away from the office they should ensure that their email Out of Office messages inform the sender that they must redirect EIR/FOI requests to UHSussex.foi@nhs.net.

6.4.2 Under no circumstances should staff attempt to answer a FOI/EIR request or redirect requests to outside organisations.

6.4.3 Penalties can be imposed upon the Trust for breaching FOI/EIR legislation. Staff should understand that breaches of this Policy may result in disciplinary action, including dismissal.

6.4.4 While staff are permitted to request information via the FOIA/EIR, they are encouraged to seek information from their line manager or via normal internal channels in the first instance.

6.4.5 Staff should understand that that under FOI/EIR it is an offence to alter, deface, block, erase, destroy or conceal any information from disclosure which is held by the Trust.

6.4.6 More detailed information about the procedures that all staff should follow when they receive a Freedom of Information or Environmental Information request is summarised in the Trust's Standard Operating Procedures for FOI/EIR processing available on the staff intranet.

6.5 The Role of the Information Commissioner

6.5.1 The Information Commissioner's Office (ICO) upholds information rights in the UK, promoting openness by public bodies and data privacy for individuals. The ICO has a general duty to investigate complaints from members of the public who believe that an authority has failed to respond correctly to a request for information. The ICO will often resolve complaints informally, however they have the power to issue legally binding decision notices.

6.5.2 The ICO also have powers to enforce compliance with the FOIA/EIR if an authority:

- fails to respond adequately to requests for information;
- fails to adopt a publication scheme, or does not publish appropriate information; and
- deliberately destroys, hides or alters requested information to prevent it from being released.

6.5.3 The ICO can issue an enforcement notice if an authority is repeatedly failing to comply with its obligations. The ICO may also ask an authority to sign an agreement that they will take a particular course of action to improve their compliance with the FOIA/EIR.

- 6.5.4 The Trust will seek advice and guidance from the ICO relevant the processing of FOI/EIR requests as required and will fully cooperate with any complaint escalated to the ICO's attention.

7. Publication Scheme

- 7.1.1 A publication scheme is a formal set of information that organisations are required to proactively publish as required under section 19 of the FOIA. The Information Commissioner has produced a 'model publication scheme' for use by public authorities which the Trust has adopted.

- 7.1.2 The Trust has produced a guide to its publication scheme which describes the seven classes of information that we make routinely available to the general public and whether there is a charge for its provision.

- **Who we are and what we do** - Organisational information, locations and contacts, legal governance
- **What we spend and how we spend it** - Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts
- **What our priorities are and how we are doing** - Strategy and performance information, plans, assessments, inspections and reviews
- **How we make decisions** - Policy proposals and decisions, decision making processes, internal criteria and procedures, consultations
- **Our policies and procedures** - Current written protocols for delivering our functions and responsibilities
- **Lists and registers** - Information held in registers required by law and other lists and registers relating to the functions of the Trust
- **The services we offer** - Advice and guidance, booklets and leaflets, descriptions of the services we offer

- 7.1.3 The Trust will publish information in line with the ICO's "Definition document for health bodies in England" which outlines information that should be published as part of the Trust's publication scheme. This guidance is available from the ICO's website - <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/definition-documents/>

- 7.1.4 The publication scheme and guide are available on the Trust's public website and can also be made available in hard copy format, upon request. Applications for information detailed in the publication scheme may be received in writing (hard copy or electronic). Members of the public wanting access to information that is not included in the Trust's publication scheme can still submit a FOI/EIR request for it.

- 7.1.5 The FOI Office will support the Trust's publication scheme, which will be monitored, updated and reviewed at regular intervals as necessary.

- 7.1.6 All Directors will be responsible for maintaining current information relevant to their areas where it is published as part of the Trust's publication scheme. This

is especially important with documents such as policies and procedures. Documents made available through the scheme should be final, approved versions only. Information to be published or updated within the scheme will be generally managed via the Communications Team.

- 7.1.7 The Environmental Information Regulations also obligate the Trust to publish environmental information proactively, which includes policies, plans, reports and procedures relating to the environment. This information will also be published on the Trust's website by the Trust's Environmental Sustainability Management Team or the Facilities and Estates Team as appropriate.

7.2 Disclosure Log

- 7.2.1 In addition to proactively updating its publication scheme, the Trust will maintain an online 'disclosure log'. This log will list responses to requests made to us under FOI/EIR which are felt to be of wider public interest.

- 7.2.2 The Trust will assess each response to determine if it should be published in the disclosure log and will make a judgement accordingly by typically using the following criteria:

- demonstrable evidence that key decisions have been made by the Trust;
- if disclosure is considered in the greater public interest; and
- where the Trust has spent a significant amount of public money or disclosed information around resources.

- 7.2.3 The Company Secretary will support the FOI Manager in decisions about what responses will be published as part of the Trust's Disclosure Log. The publication of information in the Disclosure Log will be managed by the FOI Office.

- 7.2.4 The Trust will not publish personal applicant details relevant to requests submitted under FOI/EIR, or any requests from applicants relevant to their personal data.

7.3 Datasets

- 7.3.1 The provisions regarding datasets were added to the FOIA by the Protection of Freedoms Act 2012, but do not apply to the EIR. A dataset is a collection of factual information in electronic form (e.g. statistics or figures) relevant to the services and functions of the Trust that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation.

- 7.3.2 If the Trust provides information that constitutes a dataset and the requester has expressed a preference to receive the information in electronic form, the Trust will provide it in a re-usable form so far as reasonably practicable.

- 7.3.3 A re-usable format is one where the information is available in machine-readable form using open standards which enables its re-use and manipulation (e.g. CSV format). Factors that can affect whether it is reasonably practicable to provide the dataset in re-usable form include the time and cost of conversion, technical issues and the resources of the Trust.

- 7.3.4 Under its publication scheme the Trust will publish datasets that have been

requested, unless it is satisfied that it is not appropriate to do so (e.g. where an exemption applies). The Open Government Licence (OGL) is the default licence for datasets that can be re-used without charge.

8. Managing Requests for Information

- 8.1.1 It is the responsibility of the Freedom of Information Manager to ensure that the Trust has efficient processes in place to support the FOI/EIR agenda and assure that all requests are managed correctly.
- 8.1.2 The Trust has existing processes for providing information to members of the public and other persons which are not superseded by this policy. Requests for information generated as part of these existing processes should be answered as 'ordinary business' if deemed appropriate and reasonable to do so.
- 8.1.3 Requests that seek information outside of 'ordinary business' processes or other established access regimes, and those specifically defined as FOI/EIR requests will be managed by the FOI Office.
- 8.1.3 Each service area within the Trust should nominate a FOI Lead to liaise with the FOI Office regarding the provision of information as required.
- 8.1.4 Final draft responses to FOI/EIR requests must be approved by the relevant Director or deputy in their absence, or a member of staff with delegated authority.
- 8.1.5 Complex or sensitive responses should be approved by the relevant member of the Executive Team.
- 8.1.6 The Trust will not distort its process or compile a response to a FOI/EIR information request differently if it is felt that the response will prompt media interest, though the Trust's Communications Team will be sighted on the response so they are aware of potential media interest in the topic.

8.2 Defining a Valid FOI/EIR Request

- 8.2.1 In accordance with Section 8 of the FOI Act, for a request to be considered valid it must:
 - be made in writing, be legible and in a re-usable form (hardcopy or electronic format);
 - state the name of the applicant and include an address for correspondence (e.g. postal address or email); and
 - describe the information requested.
- 8.2.2 The term 'in writing' covers requests submitted by letter and electronic form, including those sent via social media (e.g. Facebook, Twitter). The request does not have to make any direct reference to the FOIA/EIR, or be the sole or main theme of the requester's correspondence.
- 8.2.3 Under the terms of the EIR, requests can also be submitted verbally. When a verbal request is received by staff, they should put the request in writing and confirm with the requester that the request has been interpreted correctly.

Although verbal requests are not considered valid under the FOIA, the *duty to assist* under section 16 of the Act means that it is good practice to receive requests in this way where necessary, but the requester should confirm that the request was interpreted correctly before processing begins.

- 8.2.4 When determining whether or not a name is valid, where a requester's name is an obvious pseudonym or only includes part of their real name, then the requester will be contacted under section 16 *duty to assist* of the FOIA and given the opportunity to provide their real name. Applicants will be informed that without a real name, their request is not valid and the ICO has no jurisdiction to consider a complaint. Where a request is not valid, any response by the Trust should be provided informally outside the Act. In contrast to the FOIA, an EIR request is still valid if the requester doesn't use their real name. A EIR request can also be made in the name of an organisation, or by one person on behalf of another, such as a solicitor on behalf of a client.
- 8.2.5 A request for information received by the Trust that is not considered either 'ordinary business' under an existing process, a Subject Access Request or an EIR request, should be processed as FOI request.
- 8.2.6 All EIR/FOI requests will be acknowledged by the FOI Team within 3 working days.

8.3 Identity of the Applicant and Reasons for the Request

- 8.3.1 FOI and EIR requests should be considered without reference to the requester's identity or motives. The focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester. Anyone can make a request for information, regardless of who they are or where they live. The requester does not need to explain why they want the information or justify their request. On this basis, the Trust will approach all requests with the understanding that all applicants should receive the same substantive response as anyone else making an identical request.
- 8.3.2 Possible exceptions to this include, but are not limited to:
- deciding whether the request is valid (FOIA only)
 - aggregation of costs under section 12 (FOIA only)
 - information comprises the requester's own personal data (FOIA and EIR)
 - information accessible via other means (FOIA and EIR)
 - repeated requests (FOIA)
 - vexatious/manifestly unreasonable requests (FOIA and EIR)

8.4 Vexatious or Repeat Requests

- 8.4.1 If the Trust has complied with a FOI request for information, it does not need to comply with a further request for the same, or substantially similar, information made by the same person. A refusal notice will be issued with reference to section 14(2) of FOIA.
- 8.4.2 The Trust is not obliged to comply with a FOI request if it is vexatious, which are defined by the ICO as requests that are unreasonable and likely to cause

disproportionate or unjustified disruption, irritation or distress. When deciding whether a request is vexatious, the Trust will consider the following themes:

- the burden on the Trust and its staff;
- the motive of the requester;
- the value or serious purpose of the request; and
- any harassment or distress of and to staff.

8.4.3 Section 12 [*cost limit*] of the FOIA will be considered first, however, section 14(1) of the FOIA may be applied where requests will cause a significant burden to the Trust (e.g. due to redacting information, consulting third parties, applying exemptions and preparing the information for publication – where associated with larger requests) and section 12 cannot be used.

8.4.4 Where sections 14(1) or (2) are considered applicable, a refusal notice explaining this will be issued within 20 working days, and include details of the Trust's internal review procedure and the right to appeal to the Information Commissioner. The FOI Code of Practice does not oblige the Trust to explain why a request is vexatious, although it is encouraged as part of the duty to provide advice and assistance under section 16 of FOIA.

8.4.5 Regulation 12(4)(b) of the EIR allows the refusal of a request for information if it is manifestly unreasonable. The purpose of the exception is to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling EIR information requests. In practice there is no material difference between a request that is vexatious under section 14(1) of FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The exception can be used:

- when the request is vexatious; or
- when the cost of compliance with the request is too great.

8.5 Round Robin Requests

8.5.1 Round Robin requests are those which are generic in nature and are designed to be 'catch all' requests submitted to a number of similar organisations. If a circular questionnaire or any other round robin request for information identifies the requester and provides an address for an answer, the Trust will consider its responsibilities under FOIA. If the request is for environmental information, the requester does not need to provide a name and the Trust will consider it under the provisions of the EIR.

8.5.2 Upon receipt of a circular, a questionnaire or any other 'round robin' request for information, the Trust will:

- where possible work with those organisations to whom the request has been submitted to ensure a consistent approach is applied;
- identify which questions are valid requests for information;
- provide advice and assistance where reasonable; and
- provide a response in line with the requirements of the relevant legislation.

8.5.3 Where questions seek comment or opinion not held on record, the Trust will, dependent on the question, advise the applicant where information is not held or

provide the comment or opinion as part of its 'ordinary business' functions.

8.6 Meta Requests

8.6.1 A meta request is a request for recorded information about the handling of a previous information request. Requesters may submit meta requests because they are dissatisfied with the manner in which their original request was handled, however, meta requests are not the same as appeals.

8.6.2 The Trust will contact the requester and ask for further clarification in any case where:

- it can't locate or identify the requested information;
- it is unclear whether the requester is making a meta request, complaining about the response to the original request, or both;
- the requester has made several previous requests for information and it isn't clear which of these the meta request relates to.

8.6.3 Meta requests do not have any special status under the FOIA or the EIR, nor are there any specific exemptions or exceptions for this type of request. The Trust will process all meta requests in the same way as any other information request.

8.7 Determining Whether Information is Held

8.7.1 The rights of access outlined under both the FOIA and EIR provides that any person making a request for information to the Trust is entitled to be informed in writing whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to them subject to any exceptions/exemptions that may apply.

8.7.2 Information is 'held' by the Trust if it is retained for the purposes of its own business. The criteria for when information is held under the FOIA includes:

- information held by the Trust at the time of the request;
- information stored in off-site servers or cloud storage;
- information held by other organisations and authorities on behalf of the Trust.

8.7.3 Information that is in the possession of the Trust, and either produced or received by it or is held for its own purposes, is to be considered 'held' for the purposes of the EIR. Information which is simply stored by the Trust on behalf of someone else is not considered held for the purposes of the EIR.

8.7.4 If a reasonable search in the areas most likely to hold the requested information does not reveal the information sought, the Trust may consider that on the balance of probabilities the information is not held.

8.7.5 The Trust is not required to generate new information for the purpose of answering a request. If extracting the information relevant to the request requires a high level of skill and judgement, this would amount to creating new information that is not already held.

8.7.6 The Trust will hold information if it holds the necessary building blocks and they

can be identified, retrieved and manipulated using a reasonable level of judgement. The Trust is not creating new information where:

- it presents information it holds in the form of a list or schedule;
- compiling an answer to a request involves simple manual manipulation of information held in files;
- it extracts information from an electronic database by searching in the form of a query.

8.7.7 Electronic information that has been deleted but not yet overwritten is held. However, under the FOIA there is no duty to communicate such information, and under the EIR a request for such information may be regarded as manifestly unreasonable.

8.7.8 The right of access applies to information which is held at the time of the request; the information does not necessarily need to be accurate.

8.7.9 The cost of determining whether information is held and providing it if it is, has a bearing on the Trust's obligation to respond to a request under either FOIA or the EIR. Under section 12 of FOIA, the Trust is not obliged to comply with a request if the cost of locating, retrieving and extracting the information would exceed the appropriate limit. There is no appropriate limit under the EIR, but the Trust may refuse a request under regulation 12(4)(b), on the grounds that it is manifestly unreasonable to carry out the work needed to either determine whether the information is held or to make that information available.

8.8 Means by which information will be conveyed

8.8.1 When a requester submits a FOI/EIR request to the Trust they may express a preference for having information communicated to them by a particular means. This could include being provided with a copy of the information (e.g. hard copy or particular electronic format), an opportunity to inspect it or a summary of the information.

8.8.2 Under the terms of the FOIA/EIR the Trust is required to make the information available by the preferred means so far as reasonably practicable. This will depend on factors such as how the information is held, the cost of complying with the preference and available resources. The Trust may charge a fee to cover the cost of communicating the information.

8.8.3 If complying with the requester's preference is not possible, an explanation will be provided to the applicant. An acceptable alternative may be agreed with the applicant or the Trust will provide the information by such means which it deems reasonable in the circumstances.

8.8.4 The requester's preference for the means of communication should be made at the time of the request. There is no duty to comply with the preference if the requester expresses it later, either after the processing of the request has begun or after the information has been provided. A change in preference will only be considered if the applicant wishes for it to be treated as a new request.

8.8.5 If the requester wants a summary, it must be established whether this is a request for a summary that already exists (i.e. held) or a preference for one to be prepared. A summary means a shortened version of all the information that is

not exempt from disclosure; it does not mean a non-exempt version of exempt information.

- 8.8.6 Neither the FOIA nor EIR obligates the Trust to create ‘new’ information for the purpose of answering a request, however, if the ‘building blocks’ necessary to produce a particular type of information are held, then such information will be provided where it is reasonably practicable to do so. If a level of expertise and judgement is required to bring the information together, then the information may not be considered held under the terms of the FOIA or EIR.
- 8.8.7 Following a number of high-profile data breaches external to the Trust, the ICO issued an advisory notice to public authorities in September 2023 calling for an immediate end to the use of original source Excel spreadsheets when responding publicly to FOI requests. Alternative approaches should be used to mitigate risk to personal information and ICO guidance *How to disclose information safely - Removing personal data from information requests and datasets* will be followed by the FOI Office when disclosing information. This will involve the conversion of spreadsheets and sensitive metadata into open reusable formats such as Comma-Separated Value (csv) files or PDFs as appropriate. The disclosure of information using Excel spreadsheets will only be done in exceptional circumstances with approval by the FOI Manager or the Company Secretary. The ICO’s guidance can be accessed here - [How to disclose information safely \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-the-data-protection-act/how-to-disclose-information-safely)

9. Duty to Provide Advice and Assistance

- 9.1.1 The Trust has a duty under both the FOIA and EIR to provide advice and assistance to applicants wishing to submit a request for information. The Trust will take all reasonable steps to achieve this.
- 9.1.2 There may be occasions when a request is received that is ambiguous or the applicant has not described the information they are seeking in a way that would allow it to be identified or located. In these cases, the Trust will contact the applicant for clarification. The 20 working day response period will not start until a satisfactory reply has been received. If a response is not received within two months, the request will be closed.
- 9.1.3 When refusing a request for information on the grounds of cost under both the FOIA and EIR, the Trust will provide reasonable advice and assistance to help the applicant reframe or refocus their request so they are able to submit a new, more manageable request. The 20 working day response period will restart once the new, revised request is received.

10. Transferring Requests for Information

- 10.1.1 Where the Trust does not hold the information requested, but thinks that another public authority does, the applicant will be informed of this and where possible, the contact details for the other authority will be provided so the applicant can redirect the request.
- 10.1.2 If the Trust does not hold the information requested and wishes to ask a different

public authority directly to deal with the request by transferring it to them, before making a transfer the Trust will:

- consult the other public authority to check whether they do actually hold the information and whether the request should be transferred – if in doubt, the Trust will not transfer the request;
- not disclose the identity of the person making the request during the consultation unless that person has consented;
- ensure it has the applicant's consent before making the transfer;
- give the applicant enough details about the date and destination of the transfer if it receives consent.

10.1.3 If the Trust holds some of the requested information, it will transfer only that part of the request that refers to information which it does not hold.

10.1.4 All transfers of requests will take place as soon as is practicable and the requester will be informed as soon as this has been done.

11. Time Limits for Compliance with Requests

11.1.1 The Trust has systems and procedures in place to ensure that it complies with the duty to confirm or deny whether it holds requested information, and to provide a response to FOI/EIR requests within the statutory timeframe of 20 working days from the point a valid request is received.

11.1.2 The 20 working day clock generally starts the next working day after the Trust receives a request. The Trust should have 20 full working days in which to process requests for information. A working day is defined as any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom. Case law has established that a working day ends at midnight.

11.1.3 Where a request is clarified or revised the statutory timeframe of twenty working days resets from the point the revised request or clarification has been received.

11.1.4 Under the FOIA there is provision for the Trust to claim a reasonable extension up to an additional 20 working days, where it needs more time to consider the public interest test associated with a qualified exemption. The EIR has a similar provision for the Trust to claim an extension of 20 working days where the complexity and volume of a request makes the 20 working day timeframe impractical.

11.1.5 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, the period from when the applicant received the fees notice to when they paid the fee is disregarded for the purposes of calculating the twentieth working day following receipt.

11.1.6 The Trust may choose to apply an exemption/exception to any information, to refuse a request if it is vexatious or repeated, or if the provision of information exceeds the cost limit or is manifestly unreasonable. A formal refusal notice will be issued within twenty working days informing the applicant of this decision, or within forty working days where an extension has been applied.

12. Refusal of Requests

12.1.1 When a FOI/EIR request is received, the Trust will either:

- provide the requester with the information; or
- issue a refusal notice explaining why it is refusing to do so; or
- a combination of the above depending on the nature of the request.

12.1.2 Under the FOIA a request can be refused when:

- an exemption in part 2 of the Act applies; or
- the cost of compliance will exceed the appropriate limit; or
- it can be demonstrated that the request is repeated or vexatious.

12.1.3 Under the EIR a request can be refused when an exception in regulations 12(4), 12(5) or 13 applies.

12.1.4 A refusal notice will be issued as soon as possible and, in most cases, no later than 20 working days after the date the request was received. Regulation 7 of the EIR allows this time period to be extended to 40 working days where the complexity and volume of the requested information means it is impractical to decide whether to refuse the request within 20 working days. If an extension is required, the requester will be informed of this within the initial 20 working day limit.

12.1.5 A refusal notice issued by the Trust will:

- explain what provision/s of the FOIA/EIR are being applied and why;
- outline any public interest considerations;
- provide details of the Trust's internal review (complaints) procedure; and
- explain the requester's right to complain to the ICO, including contact details for this.

12.2 Exemptions/Exceptions and the Public Interest Test

12.2.1 Although the Trust recognises the importance of the Act, sometimes it is not appropriate or practicable for recorded information held by the Trust to be disclosed. There are 23 exemptions under the FOIA and 14 exceptions under the EIR which may be applied to withhold information from disclosure. Applying exemptions/exceptions to requests is part of a legitimate response to FOI/EIR requests and it is the Trust's duty to consider whether any apply.

12.2.2 There are two types of Exemption under FOI: Absolute and Qualified. If information falls within the scope of an Absolute exemption the Trust does not have to disclose it; there is no Public Interest Test applied to absolute exemptions. Qualified exemptions require the Trust to carry out a Public Interest Test relevant to the information that has been requested. The Public Interest Test for a qualified exemption should take into account whether, in all circumstances, the need to withhold information outweighs the public interest in it being disclosed.

- 12.2.3 Under the EIR, there are no 'absolute' exceptions other than Regulation 13 relevant to personal data of third parties. Otherwise all exceptions are subject to a Public Interest Test.
- 12.2.4 A Public Interest Test requires the Trust to consider the relative weight of the arguments for and against disclosure and decide how the public interest is better served. This can be affected by the likelihood and severity of any prejudice; the age of the information; how far the requested information will help public understanding; and whether similar information is already in the public domain.
- 12.2.5 The Trust will only withhold the information if the public interest in maintaining the exemption outweighs the public interest in disclosing it. If the public interest is equal on both sides, then the information will also be released.
- 12.2.6 Under the EIR where more than one exception applies to the same information, the Trust will consider the public interest under each exception and may also consider the aggregate public interest arguments for and against disclosure.
- 12.2.7 A full list of exceptions and exemptions is provided in **Appendix A**.

12.3 Consultation with Third Parties

- 12.3.1 The Trust recognises there will be circumstances when it should consult third parties about information held within the scope of a request in order to consider whether information is appropriate for disclosure. These may include:
- when requests for information relate to persons or bodies who are not the applicant and/or the Trust; or
 - when the disclosure of information is likely to affect the interests of persons or bodies who are not the applicant or the Trust.
- 12.3.2 Where appropriate, the Trust will consult third parties where it proposes to disclose information which is likely to affect a third party's business or private interests. Third parties who have created or provided information may have a better understanding of its sensitivity than the Trust. The views of third parties will be especially relevant in cases where it is necessary to consider the prejudice and public interest tests.
- 12.3.3 The Trust will consult third parties where there are contractual obligations which require consultation before information is released.
- 12.3.4 Unlike the FOIA, when a request is received about environmental information wholly or jointly owned by third parties, the Trust has no explicit duty under the EIR to consult those third parties. However, as a matter of good practice the Trust will contact the relevant third parties before responding to the request where practicable.
- 12.3.5 While the Trust may decide to consult the third party, the duty to weigh the public interest and decide whether to release the information remains with the Trust. The Trust will carefully consider whether the third party's views demonstrate that they would be adversely affected if the information was released.

- 12.3.6 The third party's refusal to provide consent may be a factor that feeds into the Trust's consideration of the public interest test. If a third party does not respond to 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 information should be disclosed.

12.4 Redaction

- 12.4.1 Information requested under the FOIA or EIR may contain a mixture of information that can be disclosed and information that is subject to an exemption or exception. Redaction is a process which is carried out to remove information from a document where an exemption or exception applies. Redaction is normally carried out to remove words, sentences or paragraphs, but if so much information has to be redacted that a document becomes unreadable or is no longer meaningful in the context of the request, it may be appropriate to withhold individual sections, pages or even the entire document.
- 12.4.2 When providing redacted information under the FOIA/EIR, the Trust will indicate what exemptions or exceptions have been applied to the redacted information in the body of the response and why.
- 12.4.3 Redaction should be carried out on a copy of the original document to protect the integrity of the source document. An unredacted copy of the requested information will be retained by the FOI Office as well as the redacted copy that is released.

12.5 Complaints (Internal Review/Reconsideration)

- 12.5.1 Applicants that are dissatisfied with the processing of their request may contact the Trust to appeal against the response they received. Under the FOIA this is known as an "internal review"; under the EIR this is an opportunity for the applicant to make "representations" and the Trust to conduct a "reconsideration".

Complaints can be sent to the FOI Office either by email uhsussex.foi@nhs.net or by writing to:

Freedom of Information Office
 C/O Company Secretary
 University Hospitals Sussex NHS Foundation Trust
 Worthing Hospital
 Lyndhurst Rd,
 Worthing BN11 2DH

- 12.5.2 Complaints should be made within 40 working days of the initial Trust response. This deadline will be communicated to applicants in all responses to requests. The Trust is not obliged to provide a review if it is requested after more than 40 working days.
- 12.5.3 The FOI Manager shall appoint a lead officer for the review, who had no direct involvement with the original request and this shall normally be the Company Secretary or another senior manager. The nominated lead officer will consider the decisions made, rationale, public interest, timeliness, and all other aspects relevant to the processing of the request.

- 12.5.4 The FOI Office will support the review, helping to identify and communicate with all relevant staff that were active in the original request and invite them to review the handling of the request.
- 12.5.5 The Trust will conduct reviews within 20 working days or up to 40 working days where a review is particularly complex.
- 12.5.5 The nominated lead officer will produce a written response on conclusion of the review which should clearly outline whether the Trust's original decision is upheld, reversed or modified. The response will also detail the complainant's right to further appeal to the Information Commissioner's Office.
- 12.5.6 Where the outcome of a review is that information should be disclosed which was previously withheld, the information in question will be disclosed as soon as possible and the applicant will be informed how soon this will be.
- 12.5.6 Applicants who remain dissatisfied with the outcome of their appeal will be advised that they may exercise their right to appeal to the Information Commissioner, and subsequently to an Information Tribunal. The ICO will not consider a complaint if the Trust's appeal process was not used. Complaints about the outcome of an appeal must be submitted to the ICO within three months of the review response being issued.
- 12.5.7 If the review process identifies potential weaknesses related to the processing of FOI/EIR requests, these will be used to help improve the Trust's performance.

13. Accepting Information in Confidence from Third Parties

- 13.1.1 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 its functions and it would not be otherwise provided.
- 13.1.2 The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature.

14. Information Relevant to Trust Employees

- 14.1.1 Requests for information about Trust staff can cover a wide range of topics, including the names of staff, organisation charts and internal directories, as well as other data which can identify individual employees. This can include information on:
 - salaries and pensions
 - severance payments and compromise agreements
 - disciplinary or grievance cases
 - sickness statistics
 - training records
- 14.1.2 In most cases where information relevant to Trust staff is requested, consideration will be given as to whether the disclosure of information would

contravene UK GDPR principles. The principle most relevant is principle (a) which states that processing must be lawful, fair and transparent. Only consent or legitimate interests are considered lawful bases relevant to disclosure under the FOIA or the EIR. When personal information about Trust staff is requested, where appropriate the following will be considered:

- is there a lawful basis for disclosure?
- was consent given to disclosure?
- what is the legitimate interest (i.e. purpose of the request); is disclosure necessary for that purpose; does the legitimate interest outweigh the interests and rights of the individual?
- what potential harm or distress may disclosure cause?
- what are the reasonable expectations of the individual?
- the seniority of the role
- whether the role is public facing
- responsibility of the role for decision making and expenditure of public money

14.1.3 Additional consideration will be given where the information requested is Special Category Data or relevant to criminal allegations, proceedings or convictions. Such data will always be carefully protected as required under the UK GDPR and DPA 2018.

14.1.4 It is acknowledged that as a public authority, some justification exists for the disclosure of employee names and contact details. The Trust will disclose the names of Board members, Senior Directors and all staff at a 'Very Senior Manager' pay grade upon request, unless a valid exemption or exception applies. Names and details of staff published on the Trust's website will also be provided without acquiring additional consent.

14.1.5 Requests for salary information will be answered, where appropriate, by providing 'Agenda for Change' pay bands. Applicants will be referred to the Trust's Annual Reports if requesting information regarding Executive Director's salaries.

14.1.6 If the disclosure of information would contravene data protection legislation, where appropriate, consideration will be given to the disclosure of anonymised information in line with the Information Commissioner's Office (ICO) Anonymisation: Managing Data Protection Risk Code of Practice.

14.1.7 The disclosure of information about Trust staff will be assessed on a case-by-case basis. Consent will be sought from staff to release information relevant to them where it is reasonably practicable to do so.

15. Public Sector Contracts

15.1.1 When entering into contracts the Trust will not include contractual terms which attempt to restrict the disclosure of information it holds relating to the contract beyond the restrictions permitted by the FOIA and EIR. If a contractor holds information relating to the contract "on behalf" of the Trust, this information will be subject to the FOIA and EIR. Given the statutory obligations of the FOIA/EIR, contractors must comply with requests by the Trust for access to such information and must do so in a timely manner.

- 15.1.2 Requests for information held by contractors on behalf of the Trust will be answered by the Trust. Contractors receiving requests should pass them to the Trust for consideration or respond to the applicant to let them know they should direct their request to the Trust.
- 15.1.3 Where practicable, when entering into a contract the Trust and the contractor will agree what types of information they consider will be held by the contractor on behalf of the Trust and indicate this in the contract or in an annex or schedule. They will also put in place appropriate arrangements for the Trust to gain access to the information if a request is made under the FOIA or EIR. These appropriate arrangements may include:
- how and when the contractor should be approached for information, and who the contacts in each organisation are;
 - how quickly the information should be provided to the Trust bearing in mind the statutory deadline for responding to the request;
 - how any disagreement about disclosure between the Trust and contractor will be addressed;
 - how any request for internal review or subsequent appeal to the Information Commissioner will be handled;
 - the contractor's responsibility for maintaining adequate systems for record keeping in relation to information held on behalf of the Trust; or
 - where the Trust itself holds the requested information, the circumstances under which the Trust will consult the contractor about disclosure and the process to be adopted in such cases.
- 15.1.4 Where the Trust is asked to accept confidentiality clauses when entering into a contract with a third party, the Trust will carefully consider whether such agreements are compatible with its obligations under the FOIA/EIR and the public interest in accountability. The Trust will also be mindful of any broader transparency obligations to publish regular details of spending, tendering and contracts relevant to external suppliers and that contracts should not hinder such reporting.
- 15.1.5 There may be circumstances when the Trust offers or accepts confidentiality arrangements that are not set out within a contract, in order for the Trust to receive information from a third party; therefore, this information may be protected by exemptions/exceptions of the FOIA/EIR. It is important that both parties are aware of the legal limits placed on the enforceability of expectations of confidentiality and the public interest in transparency, as well as ensuring that such expectations are created only where it is appropriate to do so.

16. Copyright and Re-use of Information

- 16.1.1 The Re-use of Public Sector Information (RPSI) Regulations 2015 apply in respect of the 're-use' of information that the Trust produces as part of its public functions. Information supplied by the Trust in answering requests for information will generally be subject to the terms of these regulations. RPSI is intended to encourage re-use of public sector information.

- 16.1.2 Information held by the Trust that is not part of its public function and information exempt from disclosure under information access legislation (i.e. DPA, FOIA, EIR), is not covered by RPSI.
- 16.1.3 To comply with the Re-use of Public Sector Information Regulations, information will be generally provided under the Open Government Licence (OGL) and applicants will be advised of this in the body of the Trust response to requests for information. This licence will not grant any right to use information in a way that suggests any official status or that University Hospitals Sussex NHS Foundation Trust endorse the applicant or the use of the information. The re-use of the information will indicate acceptance of the terms and conditions as set out in the OGL: <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>
- 16.1.4 When Trust information is used under the OGL, the following attribution should be included where appropriate: *University Hospitals Sussex NHS Foundation Trust [year], licensed under the Open Government License:* <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>
- 16.1.5 Information that the Trust publishes as part of its Publication Scheme can be considered the list of information available for re-use and this information can be re-used without charge. Following the completion of a response to a request for information that is not covered by the Publication Scheme, consideration will be made as to whether this information should be added to the Publication Scheme.
- 16.1.6 Where information is to be re-used outside of the OGL licence terms, the Trust should be notified as unauthorised re-use may be in breach of copyright law. Such requests will be considered by the Freedom of Information Manager in consultation with Trust's subject matter experts.
- 16.1.7 If a request to re-use information provided by another organisation is received, the Trust will advise applicants of this and they will be directed to that organisation. For information where the copyright is owned by another person or organisation, applicants must apply to the copyright owner to obtain their permission to re-use. Further guidance for the re-use of information can be found at: <http://nationalarchives.gov.uk/documents/information-management/ogl-user-guidance.pdf>
- 16.1.8 The Trust reserves the right, in certain circumstances, to charge a fee for the costs of reproducing, providing and disseminating information.

17. Fees and Charges

- 17.1.1 Section 12 of FOIA allows the Trust to refuse to process a request where it estimates that it would exceed the 'appropriate limit' to either comply with the request in its entirety or confirm or deny whether the requested information is held. The relevant Regulations which define the appropriate limit for section 12 purposes are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 and are generally referred to as the 'Fees Regulations' for brevity.
- 17.1.2 The appropriate limit for NHS organisations is £450 and is calculated at the flat

rate of £25 per person, per hour. This means that the appropriate limit will be exceeded if providing information for a request will require more than 18 hours' work by Trust staff.

- 17.1.3 Under the terms of the Act, when the Trust is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the requests:
- are made by one person, or by different persons who appear to the Trust to be acting in concert or in pursuance of a campaign;
 - relate "to any extent" to the same or similar information; and
 - are received by the Trust within any period of 60 consecutive working days.
- 17.1.4 Under the FOIA, when the cost of compliance does not exceed the appropriate limit, the Trust can only charge for the costs of:
- reproducing any document containing the information, e.g. printing or photocopying;
 - postage and other forms of transmitting the information; and
 - complying with section 11 of FOIA where the applicant has expressed a preference for the means of communication and where this is reasonably practicable.
- 17.1.5 The Trust will not generally charge when the cost of compliance does not exceed the appropriate limit. Should a charge be necessary, the Trust will issue a fees notice within the 20 working day period for responding to the request. If the Trust does not receive payment within three months of issuing a fees notice, it will no longer be obliged to respond to the request.
- 17.1.6 Where the Trust claims that Section 12 is engaged it will, where reasonable, provide advice and assistance to help applicants refine the request so that it can be dealt with under the appropriate limit. If an agreement cannot be reached the Trust may exempt the requested information from disclosure.
- 17.1.7 Where it would exceed the appropriate limit to comply with a request, the Trust may charge the requester for complying with the request. Under the terms of the Act the Trust can charge for:
- the costs which may be taken into account in calculating whether the appropriate limit is exceeded;
 - the communication costs (including the costs of communicating whether or not the information is held even if it is not to be provided); and
 - staff time spent on communicating the information.
- 17.1.8 If it would exceed the appropriate limit to comply with a request, the Trust is not obliged to comply with it. The Trust may, however, decide to offer the information for a fee, in which case it will issue a fees notice within the 20 working day period for responding to the request. If the Trust does not receive payment within three months of issuing a fees notice, the request will be closed.
- 17.1.9 Under the EIR, the Trust can charge for supplying environmental information that it holds in response to a request, but any charge will be reasonable. There are two broad types of costs for which the Trust can charge:

- the cost of staff time, including overhead costs, incurred when preparing information to be supplied in response to a specific request; this includes time spent locating, retrieving and extracting the information and putting it into the required format; and
- the costs incurred when printing or copying the requested information and sending it to the applicant.

17.1.10 Where the Trust decides it requires an advance payment it will notify the applicant of this within 20 working days of receipt of the information request, together with the amount of payment required. The period from the day of this notification to the day the payment is received will not count towards the time limit for responding to the request. The applicant then has 60 working days following issue of the notification to make the payment. If payment is not made within this period the Trust is not obliged to proceed with the request.

17.1.11 The Trust will publish a schedule of charges relevant to FOI/EIR requests as part of its publication scheme.

18. Retention of Records

18.1.1 All FOI/EIR records held by the Trust will be kept for the duration specified in the NHS Records Management Code of Practice 2021, which is relevant to organisations working within, or under contract to, the NHS in England.

18.1.2 The retention period will begin when the request is formally closed and will be reviewed in three years' time. If the record is no longer required, the request, response to the request and associated correspondence will be deleted.

18.1.3 Where there was an appeal to a FOI/EIR request, the records will be reviewed in six years' time. If the record is no longer required, the request, response to the request and associated correspondence will be deleted.

18.1.4 Where redactions have been made, a copy of the redacted disclosed documents or a summary of the redactions will be retained.

18.1.5 ICO guidance "[Deleting personal data](#)" sets out that if information is deleted from a live environment and cannot be readily accessed then this will suffice to remove information for the purposes of UK GDPR.

19. Training Plan

19.1.1 A training needs analysis will be undertaken by the FOI Manager with staff affected by this policy.

19.1.2 Appropriate training will be provided to staff as necessary based on the findings of that analysis.

20. Monitoring

- 20.1.1 Compliance with this Policy will be monitored by the Company Secretary in consultation with the FOI Manager, together with independent reviews by Internal Audit on a periodic basis.
- 20.1.2 The Freedom of Information Manager is responsible for the revision and updating of this document.

21. Associated Documentation

- 21.1.1 The following documents and links will provide additional information relevant to this policy:

Trust Resources:

- Health Records Policy
- Information Governance Handbook
- PALS and Complaints Policy
- Trust Publication Scheme [see public website]

External Resources:

Code of Practice on the Management of Records (gov.uk) - <https://www.gov.uk/government/publications/code-of-practice-on-the-management-of-records-issued-under-section-46-the-freedom-of-information-act-2000>

Data Protection Act 2018 (legislation.gov.uk) - <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

Data Protection Act 2018 (ICO) - <https://ico.org.uk/for-organisations/guide-to-data-protection/>

Definition Document for Health Bodies in England (ICO re Publication Scheme) - <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/definition-documents/>

EIR Act (legislation.gov.uk) - <https://www.legislation.gov.uk/uksi/2004/3391/contents/made>

EIR Act (ICO) - <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>

FOI Act (legislation.gov.uk) - <https://www.legislation.gov.uk/ukpga/2000/36/contents>

FOI Act (ICO) - <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>

FOI Code of Practice (gov.uk) - <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (legislation.gov.uk) - <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

Regulation 8 - Charging for Environmental Information (ICO) - <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/charging-for-information-under-the-eir/>

Open Government License (OGL): <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

Records Management Code of Practice 2021 - <https://www.nhsx.nhs.uk/information-governance/guidance/records-management-code/>

Regulation 16 Code of Practice – Discharge of obligations of public authorities under the EIR (ICO) - <https://ico.org.uk/media/for-organisations/documents/2013835/eir-regulation-16-code-of-practice.pdf>

UK General Data Protection Regulations (ICO) - <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/>

Due Regard Assessment Tool

To be completed and attached to any policy when submitted to the appropriate committee for consideration and approval.

		Yes/No	Comments
1.	Does the document/guidance affect one group less or more favourably than another on the basis of:		
	• Age	No	
	• Disability	No	
	• Gender (Sex)	No	
	• Gender Identity	No	
	• Marriage and civil partnership	No	
	• Pregnancy and maternity	No	
	• Race (ethnicity, nationality, colour)	No	
	• Religion or Belief	No	
	• Sexual orientation, including lesbian, gay and bisexual people	No	
2.	Is there any evidence that some groups are affected differently and what is/are the evidence source(s)?	No	
3.	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?	N/A	
4.	Is the impact of the document likely to be negative?	No	
5.	If so, can the impact be avoided?	N/A	
6.	What alternative is there to achieving the intent of the document without the impact?	N/A	
7.	Can we reduce the impact by taking different action and, if not, what, if any, are the reasons why the policy should continue in its current form?	N/A	
8.	Has the document been assessed to ensure service users, staff and other stakeholders are treated in line with Human Rights FREDA principles (fairness, respect, equality, dignity and autonomy)?	Yes	

If you have identified a potential discriminatory impact of this policy, please refer it to **Roger Gustafson**, together with any suggestions as to the action required to avoid/reduce this impact. For advice in respect of answering the above questions, please contact uhsussex.equality@nhs.net

Dissemination, Implementation and Access Plan

To be completed and attached to any policy when submitted to Corporate Governance for consideration and TMB approval.

	Dissemination Plan	Comments
1.	Identify:	
	<ul style="list-style-type: none"> Which members of staff or staff groups will be affected by this policy? 	All staff
	<ul style="list-style-type: none"> How will you confirm that they have received the policy and understood its implications? 	Cascade via TMB and relevant Directors and FOI Leads
	<ul style="list-style-type: none"> How have you linked the dissemination of the policy with induction training, continuous professional development and clinical supervision as appropriate? 	Locally by relevant Directors to FOI Leads and staff; support training provided via FOI Office
2.	How and where will staff access the document (at operational level)?	Trust website and staff intranet

		Yes/No	Comments
3.	Have you made any plans to remove old versions of the policy or related documents from circulation?	Yes	
4.	Have you ensured staff are aware the document is logged on the organisation's register?		

APPENDIX A

The following is a list of exceptions provided under the Environmental Information Regulations that link to guidance available from the Information Commissioner's website.

- Regulation 12(4)(a) Information not held – please see '[Holding information](#)' below.
- [Regulation 12\(4\)\(b\): Manifestly unreasonable requests](#)
- [Regulation 12\(4\)\(c\): Requests formulated in too general a manner](#)
- [Regulation 12\(4\)\(d\): Material in the course of completion, unfinished documents and incomplete data](#)
- [Regulation 12\(4\)\(e\): Internal communications](#)
- [Regulation 12\(5\)\(a\): International relations, defence, national security or public safety](#)
- [Regulation 12\(5\)\(b\) – The course of justice and inquiries exception](#)
- [Regulation 12\(5\)\(c\): Intellectual property rights](#)
- [Regulation 12\(5\)\(d\): Confidentiality of proceedings](#)
- [Regulation 12\(5\)\(e\): Confidentiality of commercial or industrial information](#)
- [Regulation 12\(5\)\(f\): Interests of the person who provided the information to the public authority](#)
- [Regulation 12\(5\)\(g\): Protection of the environment](#)
- [Regulation 12\(9\): Information on emissions](#)
- [Regulation 13: personal information](#)

The following is a list of exemptions provided under the Freedom of Information Act that link to guidance available from the Information Commissioner's website.

- [Section 21: information reasonably accessible to the applicant by other means](#)
- [Sections 22 and 22A: Information intended for future publication and research information](#)
- [Section 23: security bodies](#)
- [Section 24: safeguarding national security](#)
- [How Section 23 and 24 interact](#)
- [Section 26 – defence](#)
- [Section 27: international relations](#)
- [Section 28: relations within the UK](#)
- [Section 29: the economy](#)
- [Section 30: Investigations and proceedings](#)
- [Section 31: law enforcement](#)
- [Section 32 – Court, inquiry or arbitration records](#)
- [Section 33: public audit](#)
- [Section 34: parliamentary privilege](#)

- [Section 35: government policy](#)
- [Section 36: effective conduct of public affairs](#)
- [Section 36: record of the qualified person's opinion](#)
- [Section 37: communications with Her Majesty and the awarding of honours](#)
- [Section 38: health and safety](#)
- [Section 39: environmental information](#)
- [Section 40: personal information](#)
- [Section 40: access to information held in complaint files](#)
- [Section 40: requests for personal data about public authority employees](#)
- [Section 41: information provided in confidence](#)
- [Section 42: legal professional privilege](#)
- [Section 43: commercial interest](#)
- [Section 44: prohibitions on disclosure](#)